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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–47–AD; Amendment 39–12564; AD 2001–25–11]

RIN 2120–AA64

Airworthiness Directives; Pratt and Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes two airworthiness directives (AD's), AD 99–17–16 and AD 2001–15–12. Those AD's both apply to Pratt and Whitney (PW) model PW4000 series turbofan engines. AD 99–17–16 generally requires that operators limit the number of PW4000 engines with potentially reduced stability margin to no more than one engine on each airplane, and requires initial and repetitive on-wing and test cell engine stability tests. It also establishes reporting requirements for stability testing data. AD 2001–15–12 also limits the number of PW4000 engines with potentially reduced stability on each airplane by applying rules based on airplane and engine configuration. In addition, AD 2001–15–12 also requires that engines that exceed high pressure compressor (HPC) cyclic limits based on cycles-since-overhaul (CSO) are removed from service, limits the number of engines with the HPC cutback stator (CBS) configuration to one on each airplane, and establishes a minimum rebuild standard for engines that are returned to service. These AD's were prompted by reports of surges during takeoff on airplanes equipped with PW4000 series turbofan engines.

This amendment continues the limitation on the number of PW4000 engines with potentially reduced stability on each airplane to no more than one, and introduces a new cool engine fuel spike test to allow engines to be returned to service after having exceeded cyclic limits or undergone work in the shop. This AD also continues the limitation on the number of engines with HPC CBS configuration to one on each airplane, places a cyclic limit on how long a CBS engine may remain in service, and establishes a minimum rebuild standard for engines that are returned to service. This amendment is prompted by further analyses of compressor surges in PW4000 engines, and continuing reports of surges in the PW4000 fleet. The actions specified by this AD are intended to prevent engine power losses due to HPC surge.

DATES: Effective January 17, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 17, 2002.

Comments for inclusion in the Rules Docket must be received on or before March 4, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, (860)565–6600, fax (860)565–4503. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: Since 1999, the FAA has noted a growing number of takeoff (T/O) surge events in Pratt and Whitney PW4000 series turbofan engines. These surges typically occur within 20 to 60 seconds after throttle advance to T/O power, a critical phase of flight. These events have resulted in numerous aborted T/O's, in-flight engine shutdowns, and diverted flights. To date, two events have occurred where two engines have surged at once, the latest in March 2001 involving a twin-engine airplane on takeoff.

The investigation into these surges revealed that these events are due to low stability resulting from open clearances in the aft stages of the high pressure compressor (HPC). The most open clearance condition in the aft stages of the HPC due to temperature differences between the compressor rotor and the compressor stator occurs about 20–60 seconds after the throttle is advanced for T/O. A binding of the compressor flowpath and stator segments within the outer case may add to this normal thermal mismatch condition, resulting in uneven wear patterns and areas of increased locally open clearances. Further investigation revealed common factors that can increase the likelihood for a single or multiple-engine surge event. These ''common factors'' have been identified as Engine Pressure Ratio (EPR), and ambient temperature and pressure. Pratt and Whitney (PW) has used this information to better understand the occurrence of the two dual surge events experienced to date in the PW4000 series fleet.

Since 1999, the FAA has issued five AD's that apply to the PW4000 series engines to address this surge condition. On August 12, 1999, the FAA issued AD 99–17–16 (64 FR 45426, dated August 20, 1999) to require that operators limit the number of PW4000 engines with potentially reduced stability margin to no more than one engine on each airplane, and require initial and repetitive on-wing and test cell engine stability tests. AD 99–17–16 also establishes reporting requirements for stability testing data.

On October 19, 2000, the FAA issued AD 2000–22–01 (65 FR 63793, dated October 25, 2000), to limit the number of engines to one on each airplane with

the HPC in a configuration known as the cut-back stator (CBS) configuration. AD 2000–22–01 established cyclic limits for the removal of HPC's in the CBS configuration and prohibited operators from using engines with HPC modules that incorporated the CBS configuration after the effective date of that AD. AD 2000–22–01 was later superseded by AD 2001–15–12.

On April 13, 2001, the FAA issued emergency AD 2001–08–52 in response to the March 2001, dual-engine surge event. That emergency AD restricted the use of and, ultimately, required the removal of certain PW4000 engines identified by serial number. Those engines were all suspect of reduced stability, and, therefore, at higher risk of surges. Emergency AD 2001–08–52 was superseded by AD 2001–09–07.

On April 20, 2001, the FAA issued AD 2001–09–07 (66 FR 21083, dated April 27, 2001), to supersede emergency AD 2001–08–52. AD 2001–09–07 made changes to the list of serial numbers identifying the affected engines, clarified the requirements of the emergency AD, and added engines with the HPC CBS configuration to the restrictions contained in the emergency AD to limit the number of PW4000 engines to no more than one engine with potentially reduced stability on each airplane and removal of certain PW4000 engines before exceeding cyclic limits that are determined by airplane model and engine configuration. AD 2001–09–07 was also superseded by AD 2001–15–12.

Finally, on July 17, 2001, the FAA issued AD 2001–15–12 (66 FR 38896, dated July 26, 2001) that superseded both AD 2000–22–01 and AD 2001–09–07. AD 2001–15–12 was issued as an interim measure to maintain fleet safety while an improved stability screening test was created, which would allow improved discrimination of low-surge margin engines. AD 2001–15–12 continued the limitation on the number of engines with the HPC CBS configuration and with potentially reduced stability on each airplane, but based those limitations on an evaluation by configuration, installation, thrust rating and other variables. That evaluation was used to create cyclic limits for each airplane and engine combination to maintain the risk of a multiple engine surge at an acceptable level. AD 2001–15–12 also introduced a minimum build standard for engines returned to service. Since AD 2001–15–12 was issued, the FAA has received reports of 11 additional takeoff surges in the PW4000 fleet. This amendment supersedes AD 2001–15–12 and AD 99–17–16. The FAA has continued to evaluate the PW4000 fleet surge data and improve its understanding of the PW4000 fleet's engine surge behavior, and has determined that the requirements of currently effective AD's are not sufficient to meet the original safety intent of those AD's. An evaluation of the PW4000 fleet by configuration, installation, thrust rating and utilizing the ''common factor'' variables was performed to determine which subpopulations of engines are most prone to high power takeoff surges. As a result of this evaluation, cyclic limits were created for each airplane and engine combination to maintain the risk of multiple-engine surge risk at an acceptable level. An improved off-wing (test cell) stability margin verification test was developed to allow return to service of engines, which were removed for exceeding the cycles-since-overhaul threshold, or that have had flowpath work performed while in the shop.

Although AD 2001–15–12 was adopted without notice, the FAA invited comments on the rule. The FAA received one comment from an operator of PW4000 engines. The operator notes that the AD contains a requirement that engines which exceed the specified cyclic limits be removed from service within 50 cycles after the effective date of the AD and ''thereafter.'' The operator requests that the FAA clarify whether that initial grace period of 50 cycles is available to only engines that have exceeded the cyclic limits on the effective date of the AD or if the 50-cycle grace period is also be available to engines that reach the cyclic limits after the effective date of the AD. This AD contains similar cyclic limits and a similar initial grace period. The FAA has changed the wording of the requirement to make clearer that the initial grace period applies only to those engines that would otherwise be required to be removed immediately upon the AD becoming effective. The FAA has determined that allowing those engines to operate for an additional 50 cycles will not result in an unacceptable level of safety while mitigating some of the cost of an unscheduled engine removal. As engines approach the cyclic limits after the effective date of the AD, however, the FAA expects that operators will schedule engine removals so that no unscheduled removals will be necessary.

FAA's Determination of an Unsafe Condition and Required Actions

Since the unsafe condition described is likely to exist or develop on other PW4000 series turbofan engines of the same type design, this AD is being issued to prevent engine power losses due to HPC surge events. This AD requires:

- Limiting the number of engines with the HPC CBS configuration to one on each airplane prior to further flight after the effective date of this AD, and
- Limiting the number of engines that exceed cyclic limits, based upon airplane and engine configuration, within 50, 100 or 200 CIS after the effective date of this AD, and
- A minimum rebuild standard for engines that are returned to service.

This AD also allows engines removed from service due to exceeded cyclic limit to be returned to service after either an HPC overhaul, or successfully completing a cool engine fuel spike stability evaluation.

Interim Action

The actions specified in this AD are considered interim action and further action is anticipated based on the continuing investigation of the HPC surges. This AD has been coordinated with the FAA Transport Airplanes Directorate.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–47–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in airplanes, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Airplanes, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–12346 (66 FR 38896, dated July 26, 2001) and Amendment 39–11263 (64 FR 11263, dated August 20, 1999), and by adding a new airworthiness directive (AD), Amendment 39–12564, to read as follows:

2001–25–11 Pratt and Whitney: Amendment 39–12564. Docket No. 2000–NE–47–AD. Supersedes Amendment 39–12346, and Amendment 39–11263.

Applicability: This airworthiness directive (AD) is applicable to Pratt and Whitney (PW) model PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines. These engines are installed on, but not limited to, certain models of Airbus Industrie A300, Airbus Industrie A310, Boeing 747, Boeing 767, and McDonnell Douglas MD–11 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (o) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent engine power losses due to high pressure compressor (HPC) surge, do the following:

(a) When complying with this AD, determine the configuration and category of each engine on each airplane as follows:

(1) Use the following table 1 to determine the configuration of the engine:

TABLE 1.—ENGINE CONFIGURATION LISTING

Configuration	Configuration designator	Description
(i) Phase 1 without high pressure turbine (HPT) 1st turbine vane cut back (1TVCB).	A	Engines that did not incorporate the Phase 3 configuration at the time they were originally manufactured, or have not been converted to Phase 3 configuration; and have not incorporated HPT 1TVCB using any revision of SB PW4ENG 72–514.
(ii) Phase 1 with 1TVCB	B	Same as configuration (1) except that HPT 1TVCB has been incorporated using any revision of SB PW4ENG 72–514.
(iii) Phase 3, 2nd Run	C	Engines that incorporated the Phase 3 configuration at the time they were originally manufactured, or have been converted to the Phase 3 configuration during service; and that have had at least one HPC overhaul since new.
(iv) Phase 3, 1st Run	D	Same as configuration (3) except that that the engine has not had an HPC overhaul since new.
(v) HPC Cutback Stator Configuration Engines	E	Engines that currently incorporate any revision of SB's PW4ENG72–706, PW4ENG72–704, or PW4ENG72–711
(vi) Engines that have passed Testing-21	F	Engines which have successfully passed Testing-21 performed in accordance with paragraph (h)(1) of this AD. Once an engine has passed a Testing-21, it will remain a Configuration F engine until the HPC is overhauled, or is replaced with a new or overhauled HPC.

(2) Use the following Table 2 to determine the category of Airbus engines:

TABLE 2.—AIRBUS AIRPLANE ENGINE CATEGORY LISTING

Engine model	Category	Engine serial number (SN)
(i) PW4156, PW4156A, and PW4158 engines.	1	717201, 717205, 717702, 717703, 717710, 717752, 717788, 717798, 717799, 724023, 724026, 724027, 724033, 724034, 724036, 724037, 724040, 724041, 724044, 724045, 724048, 724049, 724050, 724051, 724052, 724055, 724056, 724059, 724061, 724062, 724063, 724065, 724067, 724073, 724074, 724075, 724079, 724088, 724089, 724090, 724091, 724094, 724095, 724551, 724552, 724555, 724556, 724557, 724558, 724561, 724562, 724563, 724564, 724567, 724568, 724569, 724570, 724571, 724572, 724573, 724574, 724575, 724576, 724577, 724578, 724640, 724806, 724807, 724808, 724809, 724811, 724820, 724821, 724827, 724833, 724835, 724836, 724840, 724841, 724848, 724849, 724855, 724857, 724858, 724861, 724862, 724865, 724866, 724868, 724909, 724910, 724913, 724914, 724924, 724925, 724926, 724927, 727912, 728519, 728520, 728521, 728522, 728523, 728524, 728525, 728526, 728527, 728528, 728534, 728535, 728536, 728537, 728538, 728539, 728540, 728541, 728542, 728543, 728544, 728545, 728546, 728547, 728548, 728549, 728550, 728551, 728552, 728553, 728554, 728557, 728558, 728559, 728560, 728561, 728562, 728563, 728564.
(ii) PW4158 engines	2	717704, 724001, 724002, 724004, 724005, 724006, 724007, 724008, 724009, 724010, 724011, 724019, 724020, 724031, 724035, 724038, 724039, 724042, 724043, 724047, 724068, 724069, 724071, 724076, 724077, 724080, 724085, 724086, 724087, 724092, 724093, 724096, 724097, 724801, 724802, 724803, 724804, 724805, 724813, 724814, 724819, 724823, 724824, 724825, 724826, 724828, 724831, 724832, 724843, 724846, 724847, 724851, 724852, 724853, 724854, 724859, 724860, 724863, 724864, 724867, 724869, 724870, 724871, 724872, 724873, 724874, 724875, 724876, 724880, 724881, 724882, 724883, 724884, 724885, 724886, 724887, 724888, 724889, 724890, 724892, 724893, 724894, 724895, 724896, 724897, 724898, 724899, 724900, 724932, 727315, 727436, 728501, 728502, 728503, 728504, 728505, 728506, 728507, 728508, 728509, 728510, 728511, 728515, 728518, 728531, 728532, 728533.
(iii) PW4156, PW4156A, and PW4158.	3	All others not listed by SN in this Table.

Engines Used on Boeing Airplanes

(b) Except as provided in paragraph (g) of this AD, within 50 airplane cycles after the effective date of this AD, limit the number of engines that exceed the engine cycles-since-new (CSN), engine cycles-since-overhaul (CSO), or engine cycles since passing Testing-21 (CST) limits listed in the following Table 3, to:

(1) No more than one engine per airplane for dual-engine airplanes.

(2) No more than two engines per airplane for three-engine airplanes.

(3) No more than three engines per airplane for four-engine airplanes:

TABLE 3.—ENGINE STAGGER LIMITS FOR BOEING AIRPLANES

Configuration designator	B747–PW4056	B767–PW4052	B767–PW4056	B767–PW4060/ PW4060A/PW4060C/ PW4062	MD–11 PW4460/ PW4462
A	1,400 CSN or CSO	3,000 CSN or CSO	1,600 CSN or CSO	900 CSN or CSO	800 CSN or CSO.
B	2,100 CSN or CSO	4,400 CSN or CSO	2,800 CSN or CSO	2,000 CSN or CSO	1,200 CSN or CSO.
C	2,100 CSN or CSO	4,400 CSN or CSO	2,800 CSN or CSO	2,000 CSN or CSO	1,300 CSN or CSO.
D	2,600 CSN or CSO	4,400 CSN or CSO	3,000 CSN or CSO	2,200 CSN or CSO	2,000 CSN or CSO.
E	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO.
F	800 CST	800 CST	800 CST	800 CST	800 CST.

(c) Except as provided in paragraph (g) of this AD, within 100 airplane cycles after the effective date of this AD, limit the number of engines that exceed the CSN, CSO, or CST limits listed in Table 3, to:

(1) No more than one engine per airplane for three-engine airplanes.

(2) No more than two engines per airplane for four-engine airplanes.

(d) Within 200 airplane cycles after the effective date of this AD, limit the number of engines that, exceed the CSN, CSO, or CST limits listed in Table 3, to no more than one engine per airplane for four-engine airplanes.

(e) Thereafter, ensure that no more than one engine per airplane exceeds the CSN, CSO, or CST limit listed in Table 3.

Engines Used on Airbus Airplanes

(f) For engines installed on Airbus airplanes, do the following:

(1) Within 50 airplane cycles after the effective date of this AD, limit the number of engines that exceed, the CSN, CSO, or CST limits listed in the following Table 4, to no more than one engine per airplane:

TABLE 4.—ENGINE STAGGER LIMITS FOR AIRBUS AIRPLANES

Configuration designator	A310 PW4156 and PW4156A and A300 PW4158 Category 1	A300 PW4158 Category 2	A310 PW4156 and PW4156A and A300 PW4158 Category 3	A310 PW4152
A	900 CSN or CSO	1,850 CSN or CSO	500 CSN or CSO	1,050 CSN or CSO
B	2,200 CSN or CSO	4,400 CSN or CSO	1,600 CSN or CSO	4,000 CSN or CSO
C	2,200 CSN or CSO	4,400 CSN or CSO	1,600 CSN or CSO	4,000 CSN or CSO
D	4,400 CSN or CSO	4,400 CSN or CSO	4,400 CSN or CSO	4,400 CSN or CSO
E	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO
F	800 CST	800 CST	800 CST	800 CST

(2) Thereafter, ensure that no more than one engine per airplane, that exceeds the CSN, CSO, or CST limit listed in Table 4.

Configuration E Engines

(g) For all configuration E engines, do the following:

(1) Before further flight, limit the number of engines with configuration E from Table 1 of this AD to one on each airplane.

(2) Remove all engines with configuration E from service before accumulating 1,300 CSN or cycles-since-conversion to configuration E, whichever is later.

Stability Testing Requirement

(h) Engines removed from service in accordance with paragraphs (b), (c), (d) or (f) of this AD may be returned to service under the following conditions:

(l) After passing a cool-engine fuel spike stability test (Testing-21) that has been done in accordance with one of the following PW4000 Engine Manual (EM) Temporary Revisions (TR's) as applicable, except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge:

(i) PW4000 PW EM 50A443, Temporary Revision No. 71–0026, dated November 14, 2001.

(ii) PW EM 50A822, Temporary Revision No. 71–0018, dated November 14, 2001.

(iii) PW EM 50A605, Temporary Revision No. 71–0035, dated November 14, 2001.

(iv) Engines tested before the effective date in accordance with PW IEN 96KC973D, dated October 12, 2001, meets the requirements of Testing-21, or

(2) The HPC was replaced with an HPC that is new from production with no time in service, or

(3) An engine whose HPC has been overhauled, or replaced with an overhauled HPC.

Minimum Build Standard

(i) For any engine that undergoes an HPC overhaul after the effective date of this AD, do the following:

(1) Inspect the HPC mid-hook and rear-hook of the HPC inner case for wear in accordance with PW4000 Clean, Inspect and Repair (CIR) Manual PN 51A357, Section 72–35–68 Inspection/Check–04, Indexes 8–11, revised September 15, 2001. If the HPC rear hook is worn beyond serviceable limits, replace the HPC inner case rear hook with an improved durability hook in accordance with PW SB PW4ENG72–714, issued June 27, 2000. If the HPC inner case mid hook is worn beyond serviceable limits, repair the HPC inner case mid hook in accordance with any revision of PW4000 CIR PN 51A357 Section 72–35–68, Repair–16, issued June 15, 1996.

(2) After the effective date of this AD, any engine that undergoes an HPC overhaul may not be returned to service unless it meets the build standard of the following PW SB's: PW4ENG 72–484, PW4ENG 72–486, PW4ENG 72–514, and PW4ENG 72–575. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG 72–514.

(j) After the effective date of this AD, any engine that undergoes separation of the HPC and HPT modules must not be installed on an airplane unless it meets the build standard of PW SB PW4ENG 72–514. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG 72–514.

(k) After the effective date of this AD, Testing-21 must be performed in accordance with paragraph (h) of this AD, before an engine can be returned to service after having undergone maintenance in the shop, except under any of the following conditions;

(1) The HPC was overhauled, or replaced with an overhauled HPC, or

(2) The HPC was replaced with an HPC that is new from production with no time in service, or

(3) The shop visit did not result in the separation of a major engine flange, with the exception of the ''A'' flange or ''T'' flange.

(l) When a thrust rating change has been made by using the Electronic Engine Control (EEC) programming plug, or an installation change has been made, during an HPC overhaul period, use the lowest cyclic limit associated with any configuration used during that overhaul period.

(m) For engines that experience a surge, do the following:

(1) For engines that experience a Group 3 takeoff surge, remove the engine from service and perform an HPC overhaul.

(2) For engines that experience a surge at Engine Pressure Ratios (EPR's) greater than 1.25, remove the engine from service within 25 cycles and perform Testing-21.

Definitions

(n) For the purposes of this AD, the following definitions apply:

(1) An HPC overhaul is defined as restoration of the HPC stages 5 through 15 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(2) A Phase 3 engine is identified by a (-3) suffix after the engine model number on the data plate if incorporated at original manufacture, or a ''CN'' suffix after the engine serial number if the engine was converted using PW SB's PW4ENG 72–490, PW4ENG 72–504, or PW4ENG 72–572 after original manufacture.

(3) A Group 3 takeoff surge is defined as the occurrence of any of the following engine symptoms during takeoff operation (either at reduced, derated or full rated takeoff power setting) after takeoff power set, which can be attributed to no specific and correctable fault condition after following aircraft level surge-during-forward-thrust troubleshooting procedures:

(i) Engine noises, including rumblings and loud ''bang(s).''

(ii) Unstable engine parameters (EPR, N1, N2, and fuel flow) at a fixed thrust setting.

(iii) Exhaust gas temperature (EGT) increase.

(iv) Flames from the inlet, the exhaust, or both.

Alternative Methods of Compliance

(o) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(p) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Testing-21 Reports

(q) Report the results of the cool engine fuel spike stability assessment tests (Testing-21) to the ANE–142 Branch Manager, Engine Certification Office, 12 New England Executive Park, Burlington, MA 01803–5299, or by electronic mail to 9-ane-surge-ad-reporting@faa.gov. The following data must be reported:

(1) Engine serial number.

(2) Engine configuration designation per Table 1.

(3) Date of the cool engine fuel spike stability test.

(4) HPC Serial Number, and HPC time and cycles since new and since compressor overhaul at the time of the test.

(5) Results of the test (Pass/Fail).

Documents That Have Been Incorporated by Reference

(r) The inspection shall be done in accordance with the following Pratt & Whitney service bulletin (SB), Internal Engineering Notice (IEN), Temporary Revisions (TR's), Clean, Inspection, and Repair Manual (CIR) repair procedures:

Document No.	Pages	Revision	Date
PW SB PW4ENG72–714	1–2	1	November 8, 2001.
	3	Original	June 27, 2000.
	4	1	November 8, 2001
	5–12	Original	June 27, 2000.
Total pages: 12.			
PW IEN 96KC973D	All	Original	October 12, 2001.
Total pages: 19.			
PW TR 71–0026	All	Original	November 14, 2001.
Total pages: 24.			
PW TR 71–0018	All	Original	November 14, 2001.
Total pages: 24.			
PW TR 71–0035	All	Original	November 14, 2001.
Total pages: 24.			
PW CIR 51A357, Section 72–35–68, Inspection/Check–04, Indexes 8–11.	All	Original	September 15, 2001.
Total pages: 5.			
PW CIR 51A357, Section 72–35–68, Repair 16	All	Original	June 15, 1996.
Total pages: 1.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, (860)565–6600, fax (860)565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(s) This amendment becomes effective on January 17, 2002.

Issued in Burlington, Massachusetts, on December 12, 2001.

Robert G. Mann,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–31296 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34–45194]

Commission Guidance on the Scope of Section 28(e) of the Exchange Act

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: We are publishing interpretive guidance on the application of Section 28(e) of the Securities Exchange Act of 1934 (''Exchange Act''). This section provides a safe harbor to money managers who use the commission dollars of their advised accounts to obtain research and brokerage services. The guidance we are publishing today clarifies that the term ''commission'' for purposes of the Section 28(e) safe harbor encompasses, among other things, certain transaction costs, even if not denominated a ''commission.''

EFFECTIVE DATE: The guidance is effective on January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel; Joseph Corcoran, Special Counsel, (202) 942–0073, Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

If money managers use commission dollars of their advised accounts to obtain research and brokerage services, Section 28(e) prevents them from being held to have breached a fiduciary duty, provided the conditions of the section are met.[1] Previously, the Commission interpreted Section 28(e) to be available only for research and brokerage services obtained in relation to commissions paid to a broker-dealer acting in an ''agency'' capacity.[2] That interpretation prevented money managers from relying on the safe harbor for research and brokerage services obtained in relation to fees charged by market makers when they executed transactions in a ''principal'' capacity.

The Nasdaq Stock Market, Inc. (''Nasdaq'') asked us to reconsider this interpretation of Section 28(e). In particular, Nasdaq urged us to interpret the Section 28(e) safe harbor to apply not just to research and brokerage services obtained in relation to commissions on agency transactions, but also to such services obtained in relation to fully and separately disclosed fees on certain riskless principal transactions effected by National Association of Securities Dealers, Inc. (''NASD'') members and reported under certain NASD trade reporting rules.[3] In Nasdaq's view, the recent amendments to its trade reporting rules for certain riskless principal transactions support a modification of the Commission's interpretation of Section 28(e).[4]

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[1] 15 U.S.C. 78bb(e).

[2] Investment Advisers Act Release No. 1469 (February 14, 1995), 60 FR 9750 (February 21, 1995). In this release, the Commission stated, ''[t]he safe harbor does not encompass soft dollar arrangements under which research services are acquired as a result of principal transactions,'' adopting a position originally outlined in a 1990 staff letter, authorized by the Commission, to the Department of Labor. *See* Letter re: *Section 28(e) of the Securities Exchange Act of 1934* (July 25, 1990). *See also* Investment Company Act Release No. 20472 (August 11, 1994), 59 FR 42187 (August 17, 1994).

[3] *See* Letter from Hardwick Simmons, Chief Executive Officer, The Nasdaq Stock Market, Inc. to Harvey L. Pitt, Chairman, Commission, dated September 7, 2001.

[4] *See* Exchange Act Release Nos. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999) (File No. SR–NASD–98–59); 41606 (July 8, 1999), 64 FR 38226 (July 15, 1999) (File No. SR–NASD–98–08); 43303 (September 19, 2000), 65 FR 57853 (September 26, 2000) (File No. SR–NASD–00–52). These filing amended NASD Rules 4632 (the trade reporting rule for Nasdaq National Market securities), 4642 (the trade reporting rule for Nasdaq SmallCap Market securities), and 6420 (the trade reporting rule for eligible securities).

II. Discussion

Section 28(e) of the Exchange Act prevents a person who exercises investment discretion with respect to an account from being ''deemed to have acted unlawfully or to have breached a fiduciary duty * * * solely by reason of his having caused the account to pay a [broker-dealer] an amount of commission for effecting a securities transaction in excess of the amount of commission another [broker-dealer] would have charged for effecting that transaction, if such person determined in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services provided by such [broker-dealer]. * * *'' [5]

This release clarifies the meaning of the term ''commission'' in the context of Section 28(e), and, therefore, the type of fees paid by a managed account to a broker-dealer for a securities transaction that may be used by the money manager to obtain research and brokerage services within the safe harbor. As noted above, the Commission to date has interpreted the term ''commission'' to include fees paid by a managed account to a broker-dealer for effecting a transaction in an agency capacity. This interpretation is based on the understanding that the term ''commission'' generally connotes an agency transaction.[6] However, that interpretation is not mandated by the language of the statute. In fact, the reference to ''dealer'' in Section 28(e) might suggest that the term ''commission'' includes fees paid to a broker-dealer acting in other than an agency capacity.

The meaning of the term ''commission'' in Section 28(e) is informed by the requirement that a money manager relying on the safe harbor must determine in good faith that the amount of ''commission'' is reasonable in relation to the value of research and brokerage services received. This requirement presupposes that a ''commission'' paid by the managed account is quantifiable in a verifiable way and is fully disclosed to the money manager. When we issued our guidance in 1995, an agency transaction had more cost transparency than a principal transaction because frequently embedded within the cost of a principal transaction was undisclosed compensation to the dealer. In other words, fees on principal transactions were not quantifiable and fully disclosed in a way that would permit a money manager to determine that the fees were reasonable in relation to the value of research and brokerage services received.

Since that time, the NASD has modified its trade reporting rules for certain riskless principal transactions. Currently, NASD Rule 4632 (applicable to Nasdaq National Market securities), NASD Rule 4642 (applicable to Nasdaq SmallCap Market securities), and NASD Rule 6420 (applicable to ''eligible securities'') require a riskless principal transaction in which both legs are executed at the same price (''Eligible Riskless Principal Transaction'') to be reported once, in the same manner as an agency transaction, exclusive of any markup, markdown, commission equivalent, or other fee.[7] Coupled with Exchange Act Rule 10b–10, this form of trade reporting means that a money manager agreeing to an Eligible Riskless Principal Transaction receives the same price as received in the offsetting trade and that this price is disclosed on a confirmation that also fully discloses the remuneration to the NASD member for effecting this transaction.[8] Thus, a money manager opting for an Eligible Riskless Principal Transaction would now be informed of the entire amount of a market maker's charge for effecting the trade.

In recognition of the transparency achieved in the Nasdaq market for certain riskless principal transactions, which allows a money manager to make the necessary determination under Section 28(e), we are modifying our interpretation of Section 28(e). Specifically, we now interpret the term ''commission'' in Section 28(e) of the Exchange Act to include a markup, markdown, commission equivalent or other fee paid by a managed account to a dealer for executing a transaction where the fee and transaction price are fully and separately disclosed on the confirmation and the transaction is reported under conditions that provide independent and objective verification of the transaction price subject to self-regulatory organization oversight.

Fees paid for Eligible Riskless Principal Transactions that are reported under NASD Rule 4632, 4642, or 6420 would fall within this interpretation.[9] Fees paid to an NASD member for effecting an Eligible Riskless Principal Transaction are distinguishable from fees paid on traditional riskless principal transactions as well as traditional principal transactions involving a dealer's inventory. Fees on other riskless principal transactions can include an undisclosed fee (reflecting a dealer's profit on the difference in price between the first and second legs of the transaction). Fees on traditional principal transactions also can include an undisclosed fee based on some portion of the spread. In addition, the price of the trade, if reported, is to some degree within the control of the dealer. In contrast, fees on Eligible Riskless Principal Transactions that are reported under NASD Rule 4632, 4642, or 6420 must be fully and separately disclosed. Moreover, the price of the trade is validated by the offsetting leg of the transaction.

Required disclosure of fees under confirmation rules and reporting of the trade under self-regulatory organization rules at a single price for both offsetting transactions, which provides independent verification of this price, give money managers information about fees and trade prices sufficient to make the determination of reasonableness of these charges. It is therefore reasonable to treat such fees as a ''commission'' for purposes of Section 28(e) only. As other markets develop equivalent regulations to ensure equivalent transparency, transaction charges in those markets that meet the requirements of this interpretation will be considered to fall within the interpretation.

[5] 15 U.S.C. 78bb(e). *See also* Exchange Act Release No. 23170 (April 23, 1986), 51 FR 16004 (April 30, 1986).

[6] In adopting the position in 1995 that Section 28(e) does not encompass principal transactions, we noted a 1990 staff letter to the Department of Labor. In that letter, the Division of Market Regulation stated that, ''Section 28(e) refers to 'commissions' only, which connote transactions effected on an agency basis, and does not refer to markups or markdowns, which would more clearly have suggested that Congress intended to extend the safe harbor to principal transactions.'' *See supra* note 2.

[7] *See* NASD Rules 4632(d)(3)(B) (for Nasdaq Market securities), 4642(d)(3)(B) (for Nasdaq SmallCap Market securities), and 6420(d)(3)(B) (for eligible securities). Each of these rules defines a riskless principal transaction as a ''transaction in which a member, after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell.''

[8] Exchange Act Rule 10b–10(a)(2)(ii), 17 CFR 240.10b–10(a)(2)(ii). Nasdaq SmallCap Market securities are subject to Exchange Act Rule 10b–10. *See* Exchange Act Release No. 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001).

[9] Riskless principal transactions in the debt market, however, are not currently subject to confirmation and reporting requirements that meet these conditions, under either NASD or Commission rules, and therefore would not be within the Section 28(e) safe harbor. Such transactions do not afford money managers the level of transparency necessary to determine if the remuneration paid is reasonable in relation to the value received, as required to rely on Section 28(e). The interpretation does not currently extend to other securities that may have similar reporting requirements, but that do not have the same confirmation requirements for market makers, *e.g.*, OTC Bulletin Board stocks, Pink Sheet stocks, and convertible securities.

III. Conclusion

For the foregoing reasons, we find that this interpretation is consistent with Section 28(e) of the Exchange Act and the requirements of that section.

List of Subjects in 17 CFR Part 241

Securities.

Amendments to the Code of Federal Regulations

■ For the reasons set forth above, the Commission is amending title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 1. Part 241 is amended by adding Release No. 34–45194 and the release date of December 27, 2001 to the list of interpretative releases.

Dated: December 27, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–32199 Filed 12–31–01; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8975]

RIN 1545–BA21

Certain Transfers of Property to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that apply to certain transactions or events that result in a Regulated Investment Company [RIC] or a Real Estate Investment Trust [REIT] owning property that has a basis determined by reference to a C corporation's basis in the property. These regulations affect RICs, REITs, and C corporations and clarify the tax treatment of transfers of C corporation property to a RIC or REIT. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective January 2, 2002.

Applicability Dates: For dates of applicability, see §§ 1.337(d)–6T(e) and 1.337(d)–7T(f).

FOR FURTHER INFORMATION CONTACT: Lisa A. Fuller, (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1672. Responses to this collection of information are required to obtain a benefit, i.e., to elect to recognize gain as if the C corporation had sold the property at fair market value or to elect section 1374 treatment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. section 6103.

Background

Sections 631 and 633 of the Tax Reform Act of 1986 (the 1986 Act) (Public Law 99–514, 100 Stat. 2085, 2272), as amended by section 1006(e) and (g) of the Technical and Miscellaneous Revenue Act of 1988 (the 1988 Act) (Public Law 100–647, 102 Stat. 3342, 3400–01), amended the Internal Revenue Code (Code) to repeal the *General Utilities* doctrine. In particular, the 1986 Act amended sections 336 and 337 to require corporations to recognize gain or loss on the distribution of property in connection with complete liquidations other than certain subsidiary liquidations. Section 337(d) directs the Secretary to prescribe regulations as may be necessary to carry out the purposes of *General Utilities* repeal, including rules to ''ensure that such purposes may not be circumvented * * * through the use of a regulated investment company, a real estate investment trust, or tax-exempt entity * * *'' Absent special rules, the transfer of property owned by a C corporation to a RIC or REIT could result in permanently removing the property's built-in gain from tax at the corporate level, because RICs and REITs generally are not subject to tax on income that is distributed to their shareholders.

On February 4, 1988, the IRS issued Notice 88–19 (1988–1 C.B. 486) announcing its intention to promulgate regulations under the authority of section 337(d) with respect to transactions or events that result in a RIC or REIT owning property that has a basis determined by reference to a C corporation's basis (a carryover basis). Notice 88–19 provided that the regulations would apply with respect to the net built-in gain of C corporation assets that become assets of a RIC or REIT by the qualification of a C corporation as a RIC or REIT or by the transfer of assets of a C corporation to a RIC or REIT (a conversion transaction). The Notice further provided that, where the regulations apply, the C corporation would be treated, for all purposes, as if it had sold all of its assets at their respective fair market values and immediately liquidated. The Notice provided, however, that the regulations would not allow the recognition of a net loss and that, except as provided in the Notice, the regulations would not affect the characterization for tax purposes of, or the tax treatment of parties to, any transactions to which they apply. For example, shareholders of a C corporation who received RIC shares in a transaction that qualified as a reorganization under section 368(a)(1)(C) would not recognize gain or loss solely because the C corporation was subject to tax. The Notice also provided that immediate gain recognition could be avoided if the C corporation that qualified as a RIC or REIT or the transferee RIC or REIT, as the case may have been, elected to be subject to tax under section 1374 with respect to the C corporation property. Notice 88–19 also indicated that the regulations would apply retroactively to June 10, 1987. Notice 88–96 (1988–2 C.B. 420), amplifies Notice 88–19 by

providing that the regulations described in Notice 88–19 would provide an exception to the general gain recognition rules for any C corporation that qualified to be taxed as a RIC for at least one taxable year, then failed to so qualify for one taxable year, and then requalified to be taxed as a RIC in the next taxable year.

On February 7, 2000, Treasury and the IRS published temporary regulations [TD 8872] (the 2000 temporary regulations) reflecting the principles set forth in Notice 88–19 and Notice 88–96, a notice of proposed rulemaking by cross-reference to temporary regulations, and a notice of public hearing [REG–209135–88]. The 2000 temporary regulations apply retroactively to June 10, 1987.

Treasury and the IRS have received a number of comments, both written and oral, on the 2000 temporary regulations. A public hearing was held on May 10, 2000. After considering these comments, Treasury and the IRS have decided to issue two new sets of temporary regulations, one that will apply to conversion transactions occurring on or after June 10, 1987 and before January 2, 2002 (the –6T regulations), and another that will apply to conversion transactions occurring on or after January 2, 2002 (the –7T regulations). Alternatively, taxpayers generally may apply the 2000 temporary regulations in lieu of the –6T regulations to any conversion transaction that occurred on or after June 10, 1987 and before January 2, 2002. However, RICs and REITs that rely on the 2000 temporary regulations and that are subject to section 1374 treatment may not rely on certain provisions in the 2000 temporary regulations, but instead must apply certain provisions of the –6T regulations, with respect to built-in gains and losses recognized in taxable years beginning on or after January 2, 2002. Furthermore, taxpayers are not prevented from relying on the 2000 temporary regulations merely because they elect section 1374 treatment in the manner described in the –6T regulations rather than in the manner described in the 2000 temporary regulations.

Explanation of Provisions

This preamble first discusses the –6T regulations and how the –6T regulations differ from the 2000 temporary regulations. This preamble then explains the differences between the –7T regulations and the –6T regulations.

Summary of –6T Regulations

The –6T regulations provide that, if property of a C corporation that is not a RIC or REIT becomes the property of a RIC or REIT in a conversion transaction, then the C corporation is subject to deemed sale treatment, unless the RIC or REIT elects to be subject to section 1374 treatment. Thus, the C corporation generally recognizes gain and loss as if it sold the property converted to RIC or REIT property or transferred to the RIC or REIT (the converted property) to an unrelated party at fair market value immediately before the conversion transaction. If the C corporation recognizes net gain on the deemed sale, then the basis of the converted property in the hands of the RIC or REIT is adjusted to its fair market value immediately before the conversion transaction. The –6T regulations do not permit a C corporation to recognize a net loss on the deemed sale. For this purpose, *net loss* is defined as the excess of aggregate losses over aggregate gains (including items of income), without regard to character. Where there is a net loss, the C corporation recognizes no gain or loss on the deemed sale, and the C corporation's basis in the converted property carries over to the RIC or REIT.

Clarification of Deemed Sale Treatment

The 2000 temporary regulations provide that, unless a section 1374 election is made, a C corporation that elects RIC or REIT status or transfers property to a RIC or REIT is ''treated for all purposes, including recognition of net built-in gain, as if it had sold all of its assets at their respective fair market values on the deemed liquidation date * * * and immediately liquidated.'' Commentators objected to this provision on two grounds. First, they argued that the provision is overly broad, because it treats the C corporation that is transferring property to a RIC or REIT as having sold all of its property, even where all of its property may not have been transferred to the RIC or REIT. Second, they argued that the ''for all purposes'' language could be read to suggest that the deemed liquidation results in the imposition of a shareholder tax, a result that they view as inconsistent with Notice 88–19 and the purposes of section 337(d). Commentators also argued that deemed liquidation treatment would inappropriately eliminate the C corporation's tax attributes, such as net operating loss carryforwards and earnings and profits, to which the RIC or REIT might otherwise succeed.

Treasury and the IRS agree with these comments. Accordingly, the –6T regulations clarify that the C corporation is treated as having sold only that property actually transferred to the RIC or REIT and that a shareholder-level tax is not imposed. In addition, the deemed liquidation construct has been eliminated.

Deemed Sale Loss Disallowance

The 2000 temporary regulations do not permit a C corporation to recognize a net loss on a conversion transaction. Some commentators argued that loss disallowance is inappropriate, noting that a net loss can be recognized under section 336 and § 1.337(d)–4, which governs certain transfers of property from taxable to tax-exempt entities.

Treasury and the IRS believe that loss disallowance is appropriate in the context of the –6T regulations for two reasons. First, Treasury and the IRS are concerned that a C corporation may selectively contribute loss property to a RIC or REIT in a section 351 transaction, generating an immediate loss. Because section 336 and § 1.337(d)–4 apply only where a C corporation transfers substantially all of its assets, selective contribution concerns are minimal in those contexts. Second, section 336 and § 1.337(d)–4 require C corporations to recognize both gains and losses immediately, whereas the –6T regulations allow taxpayers to defer the recognition of net gain on a conversion transaction by making an election to be subject to tax under section 1374. Allowing immediate net loss recognition while allowing deferral of net gain would provide C corporations engaging in conversion transactions with an inappropriate degree of selectivity. Taxpayers that otherwise would recognize a net gain on a conversion transaction would likely elect section 1374 treatment. Taxpayers that would recognize a net loss on a conversion transaction would likely choose deemed sale treatment. For these reasons, the –6T regulations disallow recognition of a net loss on a conversion transaction.

Section 1374 Double Tax Issue

Some commentators argued that conversion transactions do not implicate concerns regarding avoidance of *General Utilities* repeal to the extent that the RIC or REIT has C corporations as shareholders after the conversion transaction. The commentators explained that, if a C corporation continues to own stock in the RIC or REIT after a conversion transaction, then the built-in gain attributable to the transferred property is preserved in the basis of the C corporation's RIC or REIT stock. Further, the C corporation generally will be fully taxable on dividends distributed by the RIC or REIT, even where the RIC or REIT pays

tax on built-in gains. Accordingly, the commentators requested that the 2000 temporary regulations be modified to mitigate the combined impact of tax at the RIC or REIT level under section 1374 and tax at the C corporation shareholder level on RIC and REIT dividends.

Treasury and the IRS considered several approaches suggested by commentators for mitigating this double corporate tax. These approaches include: (1) Exempting section 351 transfers of property by a C corporation to a RIC or REIT from the scope of these regulations, (2) removing the requirement that RICs and REITs distribute recognized built-in gains, and (3) allowing C corporation shareholders of RICs and REITs to claim a dividends received deduction for built-in gains distributed by the RIC or REIT.

After consideration, Treasury and the IRS decided that it could not accept any of these approaches. The first two approaches were not accepted because they could create opportunities to avoid corporate-level tax on built-in gains. The third approach was not accepted because the dividends received deduction is only available for distributions characterized as ordinary income, not distributions characterized as capital gains. As explained below, under the –6T regulations, RICs and REITs may characterize most distributions of built-in gains as capital gain dividends. Moreover, all three approaches would give rise to administrative difficulties that could be addressed only through extensive rulemaking.

Section 1374 Operational Rules

The 2000 temporary regulations provide that the built-in gain of a RIC or REIT electing section 1374 treatment and the corporate-level tax imposed on that gain are subject to rules similar to the rules relating to net income from foreclosure property (NIFP) of REITs. The comments pointed out certain differences between the section 1374 rules and the NIFP rules. For example, under section 1374, any recognized built-in gain retains its character as capital gain or ordinary income. In contrast, NIFP is always treated as ordinary income. In addition, net operating losses of a C corporation can offset recognized built-in gains of an S corporation but cannot offset NIFP. Similarly, business credit carryforwards from a C corporation can reduce the tax on the net recognized built-in gain of an S corporation but cannot reduce the tax on NIFP.

In light of these differences, Treasury and the IRS have adopted an alternative approach that does not rely on the NIFP rules for coordinating the built-in gains tax imposed by this section with the provisions of subchapter M. Unlike the NIFP rules, this approach generally preserves the character of recognized built-in gains and recognized built-in losses. Under this approach, recognized built-in gains and recognized built-in losses that have been taxed in accordance with these regulations are treated like other gains and losses of RICs and REITs that are not subject to tax under these regulations. Thus, they are included in computing investment company taxable income for purposes of section 852(b)(2), real estate investment trust taxable income for purposes of section 857(b)(2), net capital gain for purposes of sections 852(b)(3) and 857(b)(3), gross income derived from sources within any foreign country or possession of the United States for purposes of section 853, and the dividends paid deduction for purposes of sections 852(b)(2)(D), 852(b)(3)(A), 857(b)(2)(B), and 857(b)(3)(A).

In addition, consistent with section 1374, the –6T regulations generally allow RICs and REITs to use loss carryforwards and credits and credit carryforwards arising in taxable years for which the corporation that generated the attribute was a C corporation (and not a RIC or REIT) to reduce net recognized built-in gain and the tax thereon, subject to the limitations imposed by sections 1374(b)(2) and (b)(3) and §§ 1.1374–5 and 1.1374–6. In addition, the –6T regulations provide an ordering rule for applying loss carryforwards, credits, and credit carryforwards to reduce net recognized built-in gain (and the tax thereon) and RIC or REIT taxable income (and the tax thereon). Under this ordering rule, loss carryforwards of a RIC or REIT must be used to reduce net recognized built-in gain for a taxable year to the greatest extent possible before such losses can be used to reduce investment company taxable income for purposes of section 852(b) or real estate investment trust taxable income for purposes of section 857(b) for that taxable year. Similarly, credits and credit carryforwards of a RIC or REIT must be used to reduce the tax on net recognized built-in gain imposed under this section for the taxable year to the greatest extent possible before such credits and credit carryforwards can be used to reduce the tax, if any, on investment company taxable income for purposes of section 852(b) or on real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

The –6T regulations also make adjustments to the taxable income limitation of section 1374 to take into account items that are unique to REITs. Under the –6T regulations, taxable income of a RIC or REIT is initially computed under sections 1374(d)(2) and 1375(b)(1)(B) as if the RIC or REIT were an S corporation. Thus, the RIC's or REIT's taxable income is its taxable income under section 63(a) without regard to—(i) deductions allowed by part VIII of subchapter B (other than the deduction allowed by section 248, relating to organizational expenditures), and (ii) the deduction under section 172. In addition, the RIC or REIT would not be allowed a deduction for dividends paid, as the dividends paid deduction is not available to S corporations. Under the –6T regulations, this amount is then reduced for REITs by certain items that are subject to a 100-percent penalty tax. Items subject to a 100-percent penalty tax, along with net income from foreclosure property, are also excluded in computing a REIT's net recognized built-in gain.

In response to comments, the –6T regulations also provide that the entity-level tax imposed on net recognized built-in gain is treated as a loss that reduces the RIC's or REIT's taxable income and earnings and profits. The character of the loss attributable to the tax on net recognized built-in gain is determined by allocating the tax proportionately (based on recognized built-in gain) among the items of recognized built-in gain included in net recognized built-in gain. With respect to RICs, the tax imposed on net recognized built-in gain is treated as attributable to the portion of the RIC's taxable year occurring after October 31.

Commentators also requested that built-in gain recognized by a RIC or REIT that is subject to section 1374 treatment generate subchapter M earnings and profits. They explained that a RIC or REIT cannot qualify as such under subchapter M if it retains any subchapter C earnings and profits. Thus, if earnings and profits attributable to recognized built-in gain were subchapter C earnings and profits, a RIC or REIT would retain its qualification only if it distributed 100 percent of the net recognized built-in gain in excess of the entity-level tax. In response to these comments, the examples in the –6T regulations clarify that earnings and profits attributable to built-in gain recognized by a RIC or REIT are subchapter M earnings and profits.

Electing Section 1374 Treatment

The 2000 temporary regulations provide that a RIC or REIT makes a section 1374 election by attaching a statement to its Federal income tax

return for the first taxable year in which the assets of a C corporation become assets of the RIC or REIT. The 2000 temporary regulations also provide a special rule for making a section 1374 election where the first taxable year in which the assets of a C corporation became the assets of a RIC or REIT ends after June 10, 1987, but before March 8, 2000 (an interim period election). Under the 2000 temporary regulations, a RIC or REIT may file an interim period election with its first Federal income tax return filed after March 8, 2000.

Commentators expressed concern that the rule applicable to interim period elections required a RIC or REIT to make an election on its first Federal income tax return filed after March 8, 2000, even if the RIC or REIT previously had made a section 1374 election. They also expressed concern that RICs and REITs were not given sufficient time after the promulgation of the 2000 temporary regulations to make interim period elections. In response to these comments, the –6T regulations allow a RIC or REIT that converted from a C corporation or acquired property with a carryover basis from a C corporation before January 2, 2002, to make a section 1374 election with any Federal income tax return filed by the RIC or REIT on or before March 15, 2003, provided that the RIC or REIT has reported consistently with such election for all periods. In addition, under the –6T regulations, an interim period election is not necessary if the RIC or REIT can demonstrate that it has previously informed the IRS of its intent to make a section 1374 election.

Some commentators also requested that Treasury and the IRS clarify that a RIC or REIT must make a separate section 1374 election for each conversion transaction in which it participates. The –6T regulations make this clarification. Thus, a RIC or REIT can elect section 1374 treatment for one conversion transaction and not elect section 1374 treatment for another conversion transaction.

Exception for Re-Election of RIC or REIT Status

Under the 2000 temporary regulations, the rule requiring recognition of gain on a conversion transaction does not apply to a C corporation that qualified to be a RIC for at least one taxable year, then failed to so qualify for a period not in excess of one taxable year, and then requalifies as a RIC. Although this exception implements Notice 88–96, the language of the 2000 temporary regulations differs slightly from the language used in Notice 88–96. Some commentators have noted that the change in language might be misinterpreted as a substantive change where none was intended. In response to these comments, this language has been clarified in the –6T regulations.

In addition, some commentators requested that the exception be expanded to cover periods longer than one taxable year. They argued that a corporation that fails to meet the RIC qualification requirements for as short a period as 6 months could be taxed as a C corporation for two taxable years. This could happen where a RIC fails the quarterly diversification test for the last quarter of one calendar year and the first quarter of the subsequent calendar year.

Other commentators requested that this exception be expanded to cover REITs. They noted that Congress generally treats RICs and REITs similarly and that there is no justification for excluding REITs from the benefit of this exception.

The –6T regulations incorporate these comments by extending the exception to REITs and the maximum period for loss of RIC or REIT status from one taxable year to two taxable years.

Retention of Retroactive Effective Date

Commentators argued that, due to the 12-year gap between the promulgation of Notice 88–19 and the issuance of the regulations implementing Notice 88–19, the regulations should not apply retroactively.

Notice 88–19 notified taxpayers that the section 337(d) regulations would apply as of June 10, 1987. The 2000 temporary regulations, which were published on February 7, 2000, do, in fact, apply as of June 10, 1987. Moreover, since February 7, 2000, taxpayers have relied on the 2000 temporary regulations. For these reasons, the 2000 temporary regulations and the –6T regulations retain the June 10, 1987, applicability date.

Summary of –7T Regulations

The –7T regulations follow the –6T regulations in most respects. However, certain changes were included in the –7T regulations that were not included in the –6T regulations, because Treasury and the IRS were concerned that these changes, if made retroactively, could have an adverse impact on taxpayers that have relied on the 2000 temporary regulations. The following sections highlight these differences between the –6T regulations and the –7T regulations.

Section 1374 Treatment as Default Rule

A number of commentators, particularly REIT commentators, expressed the view that, when a C corporation engages in a conversion transaction, section 1374 treatment should apply automatically and taxpayers that desire deemed sale treatment should be allowed to elect such treatment. They pointed out that the automatic application of a section 1374 regime is consistent with the treatment of C corporations that elect S status. Further, they argued that most taxpayers would prefer to be subject to section 1374 treatment than to deemed sale treatment. If section 1374 treatment is the default treatment, then the incidence of inadvertent failures to make elections will be reduced. However, to protect the expectations of taxpayers that engaged in conversion transactions prior to the promulgation of these regulations, the commentators recommended that section 1374 treatment be adopted as the default treatment on a prospective basis. In accordance with these comments, the –7T regulations provide that section 1374 treatment applies unless the C corporation elects deemed sale treatment.

Anti-Stuffing Rule for Taxpayers Electing Deemed Sale Treatment

Treasury and the IRS are concerned that taxpayers electing deemed sale treatment might attempt to decrease net gains on conversion transactions by stuffing loss property into a C corporation prior to a conversion transaction. Treasury and the IRS note that section 336 and § 1.337(d)–4 both have anti-stuffing rules. Accordingly, the –7T regulations include an anti-stuffing rule applicable to transactions taxed under the deemed sale approach. The anti-stuffing rule is similar to those contained in section 336 and § 1.337(d)–4.

Aggregate Principles To Apply to Partnership Transactions

Treasury and the IRS believe that a partnership with C corporation partners should be treated as an aggregate for purposes of applying these regulations. Accordingly, the –7T regulations provide that these regulations apply to property transferred by a partnership to a RIC or REIT to the extent of any C corporation partner's proportionate share of the transferred property. For example, if a C corporation owns a 20 percent interest in a partnership and that partnership contributes an asset to a REIT in a section 351 transaction, then the partnership shall be treated as a C corporation with respect to 20 percent of the asset contributed to the REIT. If the partnership were to elect deemed sale treatment with respect to such

transfer, then any gain recognized by the partnership on the deemed sale must be specially allocated to the C corporation partner.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Lisa A. Fuller of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.337(d)–6T also issued under 26 U.S.C. 337.

Section 1.337(d)–7T also issued under 26 U.S.C. 337. * * *

■ **Par. 2.** § 1.337(d)–5T is amended by:

■ 1. Revising the section heading.

■ 2. Revising paragraph (d).

■ The revisions read as follows:

§ 1.337(d)–5T Old transitional rules imposing tax on property owned by a C corporation that becomes property of a RIC or REIT (temporary).

* * * * *

(d) *Effective date.* In the case of carryover basis transactions involving the transfer of property of a C corporation to a RIC or REIT, the regulations apply to transactions occurring on or after June 10, 1987, and before January 2, 2002. In the case of a C corporation that qualifies to be taxed as a RIC or REIT, the regulations apply to such qualifications that are effective for taxable years beginning on or after June 10, 1987, and before January 2, 2002. However, RICs and REITs that are subject to section 1374 treatment under this section may not rely on § 1.337(d)–5T(b)(1), but must apply paragraphs (c)(1)(i), (c)(2)(i), (c)(2)(ii), and (c)(3) of § 1.337(d)–6T, with respect to built-in gains and losses recognized in taxable years beginning on or after January 2, 2002. In lieu of applying this section, taxpayers may rely on § 1.337(d)–6T to determine the tax consequences (for all taxable years) of any conversion transaction. For transactions and qualifications that occur on or after January 2, 2002, see § 1.337(d)–7T.

■ **Par. 3.** Sections 1.337(d)–6T and 1.337(d)–7T are added immediately after § 1.337(d)–5T to read as follows:

§ 1.337(d)–6T New transitional rules imposing tax on property owned by a C corporation that becomes property of a RIC or REIT (temporary).

(a) *General Rule*—(1) *Property owned by a C corporation that becomes property of a RIC or REIT.* If property owned by a C corporation (as defined in paragraph (a)(2)(i) of this section) becomes the property of a RIC or REIT (the converted property) in a conversion transaction (as defined in paragraph (a)(2)(ii) of this section), then deemed sale treatment will apply as described in paragraph (b) of this section, unless the RIC or REIT elects section 1374 treatment with respect to the conversion transaction as provided in paragraph (c) of this section. See paragraph (d) of this section for exceptions to this paragraph (a).

(2) *Definitions*—(i) *C corporation.* For purposes of this section, the term C corporation has the meaning provided in section 1361(a)(2) except that the term does not include a RIC or REIT.

(ii) *Conversion transaction.* For purposes of this section, the term conversion transaction means the qualification of a C corporation as a RIC or REIT or the transfer of property owned by a C corporation to a RIC or REIT.

(b) *Deemed Sale Treatment*—(1) *In general.* If property owned by a C corporation becomes the property of a RIC or REIT in a conversion transaction, then the C corporation recognizes gain and loss as if it sold the converted property to an unrelated party at fair market value on the deemed sale date (as defined in paragraph (b)(3) of this section). This paragraph (b) does not apply if its application would result in the recognition of a net loss. For this purpose, *net loss* is the excess of aggregate losses over aggregate gains (including items of income), without regard to character.

(2) *Basis adjustment.* If a corporation recognizes a net gain under paragraph (b)(1) of this section, then the converted property has a basis in the hands of the RIC or REIT equal to the fair market value of such property on the deemed sale date.

(3) *Deemed sale date*—(i) *RIC or REIT qualifications.* If the conversion transaction is a qualification of a C corporation as a RIC or REIT, then the deemed sale date is the end of the last day of the C corporation's last taxable year before the first taxable year in which it qualifies to be taxed as a RIC or REIT.

(ii) *Other conversion transactions.* If the conversion transaction is a transfer of property owned by a C corporation to a RIC or REIT, then the deemed sale date is the end of the day before the day of the transfer.

(4) *Example.* The rules of this paragraph (b) are illustrated by the following example:

Example. Deemed sale treatment on merger into RIC. (i) X, a calendar-year taxpayer, has qualified as a RIC since January 1, 1991. On May 31, 1994, Y, a C corporation and calendar-year taxpayer, transfers all of its property to X in a transaction that qualifies as a reorganization under section 368(a)(1)(C). X does not elect section 1374 treatment under paragraph (c) of this section and chooses not to rely on § 1.337(d)–5T. As a result of the transfer, Y is subject to deemed sale treatment under this paragraph (b) on its tax return for the short taxable year ending May 31, 1994. On May 31, 1994, Y's only assets are Capital Asset, which has a fair market value of $100,000 and a basis of $40,000 as of the end of May 30, 1994, and $50,000 cash. Y also has an unrestricted net operating loss carryforward of $12,000 and accumulated earnings and profits of $50,000. Y has no taxable income for the short taxable year ending May 31, 1994, other than gain recognized under this paragraph (b). In 1997, X sells Capital Asset for $110,000. Assume the applicable corporate tax rate is 35%.

(ii) Under this paragraph (b), Y is treated as if it sold the converted property (Capital Asset and $50,000 cash) at fair market value on May 30, 1994, recognizing $60,000 of gain ($150,000 amount realized—$90,000 basis). Y

must report the gain on its tax return for the short taxable year ending May 31, 1994. Y may offset this gain with its $12,000 net operating loss carryforward and will pay tax of $16,800 (35% of $48,000).

(iii) Under section 381, X succeeds to Y's accumulated earnings and profits. Y's accumulated earnings and profits of $50,000 increase by $60,000 and decrease by $16,800 as a result of the deemed sale. Thus, the aggregate amount of subchapter C earnings and profits that must be distributed to satisfy section 852(a)(2)(B) is $93,200 ($50,000 + $60,000 − $16,800). X's basis in Capital Asset is $100,000. On X's sale of Capital Asset in 1997, X recognizes $10,000 of gain, which is taken into account in computing X's net capital gain for purposes of section 852(b)(3).

(c) *Election of section 1374 treatment*—(1) *In general*—(i) *Property owned by a C corporation that becomes property of a RIC or REIT.* Paragraph (b) of this section does not apply if the RIC or REIT that was formerly a C corporation or that acquired property from a C corporation makes the election described in paragraph (c)(4) of this section. A RIC or REIT that makes such an election will be subject to tax on the net built-in gain in the converted property under the rules of section 1374 and the regulations thereunder, as modified by this paragraph (c), as if the RIC or REIT were an S corporation.

(ii) *Property subject to the rules of section 1374 owned by a RIC, REIT, or S corporation that becomes property of a RIC or REIT.* If property subject to the rules of section 1374 owned by a RIC, a REIT, or an S corporation (the predecessor) becomes the property of a RIC or REIT (the successor) in a continuation transaction, the rules of section 1374 apply to the successor to the same extent that the predecessor was subject to the rules of section 1374 with respect to such property, and the 10-year recognition period of the successor with respect to such property is reduced by the portion of the 10-year recognition period of the predecessor that expired before the date of the continuation transaction. For this purpose, a continuation transaction means the qualification of the predecessor as a RIC or REIT or the transfer of property from the predecessor to the successor in a transaction in which the successor's basis in the transferred property is determined, in whole or in part, by reference to the predecessor's basis in that property.

(2) *Modification of section 1374 treatment*—(i) *Net recognized built-in gain for REITs*—(A) *Prelimitation amount.* The prelimitation amount determined as provided in § 1.1374–2(a)(1) is reduced by the portion of such amount, if any, that is subject to tax under section 857(b)(4), (5), (6), or (7). For this purpose, the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is computed as follows:

(*1*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(A), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(2) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(2).

(*2*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(B), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(3) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(3).

(B) *Taxable income limitation.* The taxable income limitation determined as provided in § 1.1374–2(a)(2) is reduced by an amount equal to the tax imposed under sections 857(b)(5), (6), and (7).

(ii) *Loss carryforwards, credits and credit carryforwards*—(A) *Loss carryforwards.* Consistent with paragraph (c)(1)(i) of this section, net operating loss carryforwards and capital loss carryforwards arising in taxable years for which the corporation that generated the loss was not subject to subchapter M of chapter 1 of the Code are allowed as a deduction against net recognized built-in gain to the extent allowed under section 1374 and the regulations thereunder. Such loss carryforwards must be used as a deduction against net recognized built-in gain for a taxable year to the greatest extent possible before such losses can be used to reduce investment company taxable income for purposes of section 852(b) or real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(B) *Credits and credit carryforwards.* Consistent with paragraph (c)(1)(i) of this section, minimum tax credits and business credit carryforwards arising in taxable years for which the corporation that generated the credit was not subject to subchapter M of chapter 1 of the Internal Revenue Code are allowed to reduce the tax imposed on net recognized built-in gain under this paragraph (c) to the extent allowed under section 1374 and the regulations thereunder. Such credits and credit carryforwards must be used to reduce the tax imposed under this paragraph (c) on net recognized built-in gain for a taxable year to the greatest extent possible before such credits and credit carryforwards can be used to reduce the tax, if any, on investment company taxable income for purposes of section 852(b) or on real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(iii) *10-year recognition period.* In the case of a conversion transaction that is a qualification of a C corporation as a RIC or REIT, the 10-year recognition period described in section 1374(d)(7) begins on the first day of the RIC's or REIT's first taxable year. In the case of other conversion transactions, the 10-year recognition period begins on the day the property is acquired by the RIC or REIT.

(3) *Coordination with subchapter M rules*—(i) *Recognized built-in gains and losses subject to subchapter M.* Recognized built-in gains and losses of a RIC or REIT are included in computing investment company taxable income for purposes of section 852(b)(2), real estate investment trust taxable income for purposes of section 857(b)(2), capital gains for purposes of sections 852(b)(3) and 857(b)(3), gross income derived from sources within any foreign country or possession of the United States for purposes of section 853, and the dividends paid deduction for purposes of sections 852(b)(2)(D), 852(b)(3)(A), 857(b)(2)(B), and 857(b)(3)(A).

(ii) *Treatment of tax imposed.* The amount of tax imposed under this paragraph (c) on net recognized built-in gain for a taxable year is treated as a loss sustained by the RIC or the REIT during such taxable year. The character of the loss is determined by allocating the tax proportionately (based on recognized built-in gain) among the items of recognized built-in gain included in net recognized built-in gain. With respect to RICs, the tax imposed under this paragraph (c) on net recognized built-in gain is treated as attributable to the portion of the RIC's taxable year occurring after October 31.

(4) *Making the section 1374 election*—(i) *In general.* A RIC or REIT makes a section 1374 election with the following statement: ''[Insert name and employer identification number of electing RIC or REIT] elects under § 1.337–6T(c) to be subject to the rules of section 1374 and the regulations thereunder with respect to its property that formerly was held by a C corporation, [insert name and employer identification number of the C corporation, if different from name and employer identification number of the RIC or REIT].'' However, a RIC or REIT need not file an election under this paragraph (c), but will be deemed to have made such an election if it can demonstrate that it informed the IRS prior to January 2, 2002, of its intent to make a section 1374 election. An election under this paragraph (c) is irrevocable.

(ii) *Time for making the election.* An election under this paragraph (c) may be filed by the RIC or REIT with any Federal income tax return filed by the RIC or REIT on or before March 15, 2003, provided that the RIC or REIT has reported consistently with such election for all periods.

(5) *Example.* The rules of this paragraph (c) are illustrated by the following example:

Example. Section 1374 treatment on REIT election. (i) X, a C corporation that is a calendar-year taxpayer, elects to be taxed as a REIT on its 1994 tax return, which it files on March 15, 1995. As a result, X is a REIT for its 1994 taxable year and would be subject to deemed sale treatment under paragraph (b) of this section but for X's timely election of section 1374 treatment under this paragraph (c). X chooses not to rely on § 1.337(d)–5T. As of the beginning of the 1994 taxable year, X's property consisted of Real Property, which is not section 1221(a)(1) property and

which had a fair market value of $100,000 and an adjusted basis of $80,000, and $25,000 cash. X also had accumulated earnings and profits of $25,000, unrestricted net operating loss carryforwards of $3,000, and unrestricted business credit carryforwards of $2,000. On July 1, 1997, X sells Real Property for $110,000. For its 1997 taxable year, X has net income other than recognized built-in gain. Assume the highest corporate tax rate is 35%.

(ii) Upon its election to be taxed as a REIT, X retains its $80,000 basis in Real Property and its $25,000 accumulated earnings and profits. X retains its $3,000 of net operating loss carryforwards and its $2,000 of business credit carryforwards. To satisfy section 857(a)(2)(B), X must distribute $25,000, an amount equal to its earnings and profits accumulated in non-REIT years, to its shareholders by the end of its 1994 taxable year.

(iii) Upon X's sale of Real Property in 1997, X recognizes gain of $30,000 ($110,000–$80,000). X's recognized built-in gain for purposes of applying section 1374 is $20,000 ($100,000 fair market value as of the beginning of X's first taxable year as a REIT—$80,000 basis). Because X has net income other than recognized built-in gain for its 1997 taxable year, the taxable income limitation does not apply. X, therefore, has $20,000 net recognized built-in gain for the year. Assuming that X has not used its $3,000 of net operating loss carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(2) and § 1.1374–5, X is allowed a $3,000 deduction against the $20,000 net recognized built-in gain. X would owe tax of $5,950 (35% of $17,000) on its net recognized built-in gain, except that X may use its $2,000 of business credit carryforwards to reduce this tax, assuming that X has not used the credit carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(3) and § 1.1374–6. Thus, X owes tax of $3,950 under this paragraph (c). For purposes of subchapter M, X's earnings and profits for the year increase by $26,050 ($30,000 capital gain on the sale of Real Property—$3,950 tax under this paragraph (c)).

(iv) To compute X's net capital gain for purposes of section 857(b)(3) for the taxable year, the $20,000 of net recognized built-in gain less the $3,950 of tax imposed on that gain is added to X's capital gain (or loss), if any, that is not recognized built-in gain (or loss).

(d) *Exceptions*—(1) *Gain otherwise recognized.* Paragraph (a) of this section does not apply to any conversion transaction to the extent that gain or loss otherwise is recognized on such conversion transaction. See, for example, sections 336, 351(b), 356, 357(c), 367, and 1001.

(2) *Re-election of RIC or REIT status*—(i) *Generally.* Except as provided in paragraphs (d)(2)(ii) and (iii) of this section, paragraph (a)(1) of this section does not apply to any corporation that—

(A) Immediately prior to qualifying to be taxed as a RIC or REIT was subject to tax as a C corporation for a period not exceeding two taxable years; and

(B) Immediately prior to being subject to tax as a C corporation was subject to tax as a RIC or REIT for a period of at least one taxable year.

(ii) *Property acquired from another corporation while a C corporation.* The exception described in paragraph (d)(2)(i) of this section does not apply to property acquired by the corporation while it was subject to tax as a C corporation from another corporation (whether or not a C corporation) in a transaction that results in the acquirer's basis in the property being determined by reference to a C corporation's basis in the property.

(iii) *RICs and REITs previously subject to section 1374 treatment.* If the RIC or REIT had property subject to paragraph (c) of this section before the RIC or REIT became subject to tax as a C corporation as described in paragraph (d)(2)(i) of this section, then paragraph (c) of this section applies to the RIC or REIT upon its requalification as a RIC or REIT, except that the 10-year recognition period with respect to such property is reduced by the portion of the 10-year recognition period that expired before the RIC or REIT became subject to tax as a C corporation and by the period of time that the corporation was subject to tax as a C corporation.

(e) *Effective date.* This section applies to conversion transactions that occur on or after June 10, 1987, and before January 2, 2002. In lieu of applying this section, taxpayers generally may apply § 1.337(d)–5T to determine the tax consequences (for all taxable years) of any conversion transaction that occurs on or after June 10, 1987 and before January 2, 2002, except that RICs and REITs that are subject to section 1374 treatment with respect to a conversion transaction may not rely on § 1.337(d)–5T(b)(1), but must apply paragraphs (c)(1)(i), (c)(2)(i), (c)(2)(ii), and (c)(3) of this section, with respect to built-in gains and losses recognized in taxable years beginning on or after January 2, 2002. Taxpayers are not prevented from relying on § 1.337(d)–5T merely because they elect section 1374 treatment in the manner described in paragraph (c)(4) of this section instead of in the manner described in § 1.337(d)–5T(b)(3) and (c). For conversion transactions that occur on or after January 2, 2002, see § 1.337(d)–7T. This section expires on December 31, 2004.

§ 1.337(d)–7T Tax on property owned by a C corporation that becomes property of a RIC or REIT (temporary).

(a) *General Rule*—(1) *Property owned by a C corporation that becomes property of a RIC or REIT.* If property owned by a C corporation (as defined in paragraph (a)(2)(i) of this section) becomes the property of a RIC or REIT (the converted property) in a conversion transaction (as defined in paragraph (a)(2)(ii) of this section), then section 1374 treatment will apply as described in paragraph (b) of this section, unless the C corporation elects deemed sale treatment with respect to the conversion transaction as provided in paragraph (c) of this section. See paragraph (d) of this section for exceptions to this paragraph (a).

(2) *Definitions*—(i) *C corporation.* For purposes of this section, the term C corporation has the meaning provided in section 1361(a)(2) except that the term does not include a RIC or REIT.

(ii) *Conversion transaction.* For purposes of this section, the term conversion transaction means the qualification of a C corporation as a RIC or REIT or the transfer of property owned by a C corporation to a RIC or REIT.

(b) *Section 1374 treatment*—(1) *In general*—(i) *Property owned by a C corporation that becomes property of a RIC or REIT.* If property owned by a C corporation becomes the property of a RIC or REIT in a conversion transaction, then the RIC or REIT will be subject to tax on the net built-in gain in the converted property under the rules of section 1374 and the regulations thereunder, as modified by this paragraph (b), as if the RIC or REIT were an S corporation.

(ii) *Property subject to the rules of section 1374 owned by a RIC, REIT, or S corporation that becomes property of a RIC or REIT.* If property subject to the rules of section 1374 owned by a RIC, a REIT, or an S corporation (the predecessor) becomes the property of a RIC or REIT (the successor) in a continuation transaction, the rules of section 1374 apply to the successor to the same extent that the predecessor was subject to the rules of section 1374 with respect to such property, and the 10-year recognition period of the successor with respect to such property is reduced by the portion of the 10-year recognition period of the predecessor that expired before the date of the continuation transaction. For this purpose, a continuation transaction means the qualification of the predecessor as a RIC or REIT or the transfer of property from the predecessor to the successor in a transaction in which the successor's basis in the transferred property is determined, in whole or in part, by reference to the predecessor's basis in that property.

(2) *Modification of section 1374 treatment*—(i) *Net recognized built-in gain for REITs*—(A) *Prelimitation amount.* The prelimitation amount determined as provided in § 1.1374–2(a)(1) is reduced by the portion of such amount, if any, that is subject to tax under section 857(b)(4), (5), (6), or (7). For this purpose, the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is computed as follows:

(*1*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(A), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(2) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(2).

(*2*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(B), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(3) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(3).

(B) *Taxable income limitation.* The taxable income limitation determined as provided in § 1.1374–2(a)(2) is reduced by an amount equal to the tax imposed under section 857(b)(5), (6), and (7).

(ii) *Loss carryforwards, credits and credit carryforwards*—(A) *Loss carryforwards.* Consistent with paragraph (b)(1)(i) of this section, net operating loss carryforwards and capital loss carryforwards arising in taxable years for which the corporation that generated the loss was not subject to subchapter M of chapter 1 of the Code are allowed as a deduction against net recognized built-in gain to the extent allowed under section 1374 and the regulations thereunder. Such loss carryforwards must be used as a deduction against net recognized built-in gain for a taxable year to the greatest extent possible before such losses can be used to reduce investment company taxable income for purposes of section 852(b) or real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(B) *Credits and credit carryforwards.* Consistent with paragraph (b)(1)(i) of this section, minimum tax credits and business credit carryforwards arising in taxable years for which the corporation that generated the credit was not subject to subchapter M of chapter 1 of the Internal Revenue Code are allowed to reduce the tax imposed on net recognized built-in gain under this paragraph (b) to the extent allowed under section 1374 and the regulations thereunder. Such credits and credit carryforwards must be used to reduce the tax imposed under this paragraph (b) on net recognized built-in gain for a taxable year to the greatest extent possible before such credits and credit carryforwards can be used to reduce the tax, if any, on investment company taxable income for purposes of section 852(b) or on real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(iii) *10-year recognition period.* In the case of a conversion transaction that is a qualification of a C corporation as a RIC or REIT, the 10-year recognition period described in section 1374(d)(7) begins on the first day of the RIC's or REIT's first taxable year. In the case of other conversion transactions, the 10-year recognition period begins on the day the property is acquired by the RIC or REIT.

(3) *Coordination with subchapter M rules*—(i) *Recognized built-in gains and losses subject to subchapter M.* Recognized built-in gains and losses of a RIC or REIT are included in computing investment company taxable income for purposes of section 852(b)(2), real estate investment trust taxable income for purposes of section 857(b)(2), capital gains for purposes of sections 852(b)(3) and 857(b)(3), gross income derived from sources within any foreign country or possession of the United States for purposes of section 853, and the dividends paid deduction for purposes of sections 852(b)(2)(D), 852(b)(3)(A), 857(b)(2)(B), and 857(b)(3)(A).

(ii) *Treatment of tax imposed.* The amount of tax imposed under this paragraph (b) on net recognized built-in gain for a taxable year is treated as a loss sustained by the RIC or the REIT during such taxable year. The character of the loss is determined by allocating the tax proportionately (based on recognized built-in gain) among the items of recognized built-in gain included in net recognized built-in gain. With respect to RICs, the tax imposed under this paragraph (b) on net recognized built-in gain is treated as attributable to the portion of the RIC's taxable year occurring after October 31.

(4) *Example.* The rules of this paragraph (b) are illustrated by the following example:

Example. Section 1374 treatment on REIT election. (i) X, a C corporation that is a calendar-year taxpayer, elects to be taxed as a REIT on its 2004 tax return, which it files on March 15, 2005. As a result, X is a REIT for its 2004 taxable year and is subject to section 1374 treatment under this paragraph (b). X does not elect deemed sale treatment under paragraph (c) of this section. As of the beginning of the 2004 taxable year, X's property consisted of Real Property, which is not section 1221(a)(1) property and which had a fair market value of $100,000 and an adjusted basis of $80,000, and $25,000 cash. X also had accumulated earnings and profits of $25,000, unrestricted net operating loss carryforwards of $3,000, and unrestricted business credit carryforwards of $2,000. On July 1, 2007, X sells Real Property for $110,000. For its 1997 taxable year, X has net income other than recognized built-in gain. Assume the highest corporate tax rate is 35%.

(ii) Upon its election to be taxed as a REIT, X retains its $80,000 basis in Real Property and its $25,000 accumulated earnings and profits. X retains its $3,000 of net operating loss carryforwards and its $2,000 of business credit carryforwards. To satisfy section 857(a)(2)(B), X must distribute $25,000, an amount equal to its earnings and profits accumulated in non-REIT years, to its shareholders by the end of its 2004 taxable year.

(iii) Upon X's sale of Real Property in 2007, X recognizes gain of $30,000 ($110,000—$80,000). X's recognized built-in gain for purposes of applying section 1374 is $20,000 ($100,000 fair market value as of the beginning of X's first taxable year as a REIT—$80,000 basis). Because X has net income other than recognized built-in gain for its 2007 taxable year, the taxable income limitation does not apply. X, therefore, has $20,000 net recognized built-in gain for the year. Assuming that X has not used its $3,000 of net operating loss carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(2) and § 1.1374–5, X is allowed a $3,000 deduction against the $20,000 net recognized built-in gain. X would owe tax of $5,950 (35% of $17,000) on its net recognized built-in gain, except that X may use its $2,000 of business credit carryforwards to reduce the tax, assuming that X has not used the credit carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(3) and § 1.1374–6. Thus, X owes tax of $3,950 under this paragraph (b). For purposes of subchapter M, X's earnings and profits for the year increase by $26,050 ($30,000 capital gain on the sale of Real Property—$3,950 tax under this paragraph (b)).

(iv) To compute X's net capital gain for purposes of section 857(b)(3) for the taxable year, the $20,000 of net recognized built-in

gain less the $3,950 of tax imposed on that gain is added to X's capital gain (or loss), if any, that is not recognized built-in gain (or loss).

(c) *Election of deemed sale treatment*—(1) *In general.* Paragraph (b) of this section does not apply if the C corporation that qualifies as a RIC or REIT or transfers property to a RIC or REIT makes the election described in paragraph (c)(5) of this section. A C corporation that makes such an election recognizes gain and loss as if it sold the converted property to an unrelated party at fair market value on the deemed sale date (as defined in paragraph (c)(3) of this section). See paragraph (c)(4) of this section concerning limitations on the use of loss in computing gain. This paragraph (c) does not apply if its application would result in the recognition of a net loss. For this purpose, net loss is the excess of aggregate losses over aggregate gains (including items of income), without regard to character.

(2) *Basis adjustment.* If a corporation recognizes a net gain under paragraph (c)(1) of this section, then the converted property has a basis in the hands of the RIC or REIT equal to the fair market value of such property on the deemed sale date.

(3) *Deemed sale date*—(i) *RIC or REIT qualifications.* If the conversion transaction is a qualification of a C corporation as a RIC or REIT, then the deemed sale date is the end of the last day of the C corporation's last taxable year before the first taxable year in which it qualifies to be taxed as a RIC or REIT.

(ii) *Other conversion transactions.* If the conversion transaction is a transfer of property owned by a C corporation to a RIC or REIT, then the deemed sale date is the end of the day before the day of the transfer.

(4) *Anti-stuffing rule.* A C corporation must disregard converted property in computing gain or loss recognized on the conversion transaction under this paragraph (c), if—

(i) The converted property was acquired by the C corporation in a transaction to which section 351 applied or as a contribution to capital;

(ii) Such converted property had an adjusted basis immediately after its acquisition by the C corporation in excess of its fair market value on the date of acquisition; and

(iii) The acquisition of such converted property by the C corporation was part of a plan a principal purpose of which was to reduce gain recognized by the C corporation in connection with the conversion transaction. For purposes of this paragraph (c)(4), the principles of section 336(d)(2) apply.

(5) *Making the deemed sale election.* A C corporation makes the deemed sale election with the following statement: ''[Insert name and employer identification number of electing corporation] elects deemed sale treatment under § 1.337(d)–7T(c) with respect to its property that was converted to property of, or transferred to, a RIC or REIT, [insert name and employer identification number of the RIC or REIT, if different from the name and employer identification number of the C corporation].'' This statement must be attached to the Federal income tax return of the C corporation for the taxable year in which the deemed sale occurs. An election under this paragraph (c) is irrevocable.

(6) *Examples.* The rules of this paragraph (c) are illustrated by the following examples:

Example 1. Deemed sale treatment on merger into RIC. (i) X, a calendar-year taxpayer, has qualified as a RIC since January 1, 2001. On May 31, 2004, Y, a C corporation and calendar-year taxpayer, transfers all of its property to X in a transaction that qualifies as a reorganization under section 368(a)(1)(C). As a result of the transfer, Y would be subject to section 1374 treatment under paragraph (b) of this section but for its timely election of deemed sale treatment under this paragraph (c). As a result of such election, Y is subject to deemed sale treatment on its tax return for the short taxable year ending May 31, 2004. On May 31, 2004, Y's only assets are Capital Asset, which has a fair market value of $100,000 and a basis of $40,000 as of the end of May 30, 2004, and $50,000 cash. Y also has an unrestricted net operating loss carryforward of $12,000 and accumulated earnings and profits of $50,000. Y has no taxable income for the short taxable year ending May 31, 2004, other than gain recognized under this paragraph (c). In 2007, X sells Capital Asset for $110,000. Assume the applicable corporate tax rate is 35%.

(ii) Under this paragraph (c), Y is treated as if it sold the converted property (Capital Asset and $50,000 cash) at fair market value on May 30, 2004, recognizing $60,000 of gain ($150,000 amount realized − $90,000 basis). Y must report the gain on its tax return for the short taxable year ending May 31, 2004. Y may offset this gain with its $12,000 net operating loss carryforward and will pay tax of $16,800 (35% of $48,000).

(iii) Under section 381, X succeeds to Y's accumulated earnings and profits. Y's accumulated earnings and profits of $50,000 increase by $60,000 and decrease by $16,800 as a result of the deemed sale. Thus, the aggregate amount of subchapter C earnings and profits that must be distributed to satisfy section 852(a)(2)(B) is $93,200 ($50,000 + $60,000 − $16,800). X's basis in Capital Asset is $100,000. On X's sale of Capital Asset in 2007, X recognizes $10,000 of gain which is taken into account in computing X's net capital gain for purposes of section 852(b)(3).

Example 2. Loss limitation. (i) Assume the facts are the same as those described in *Example 1*, but that, prior to the reorganization, a shareholder of Y contributed to Y a capital asset, Capital Asset 2, which has a fair market value of $10,000 and a basis of $20,000, in a section 351 transaction.

(ii) Assuming that Y's acquisition of Capital Asset 2 was made pursuant to a plan a principal purpose of which was to reduce the amount of gain that Y would recognize in connection with the conversion transaction, Capital Asset 2 would be disregarded in computing the amount of Y's net gain on the conversion transaction.

(d) *Exceptions*—(1) *Gain otherwise recognized.* Paragraph (a) of this section does not apply to any conversion transaction to the extent that gain or loss otherwise is recognized on such conversion transaction. See, for example, sections 336, 351(b), 356, 357(c), 367, and 1001.

(2) *Re-election of RIC or REIT status*—(i) *Generally.* Except as provided in paragraphs (d)(2)(ii) and (d)(2)(iii) of this section, paragraph (a)(1) of this section does not apply to any corporation that—

(A) Immediately prior to qualifying to be taxed as a RIC or REIT was subject to tax as a C corporation for a period not exceeding two taxable years; and

(B) Immediately prior to being subject to tax as a C corporation was subject to tax as a RIC or REIT for a period of at least one taxable year.

(ii) *Property acquired from another corporation while a C corporation.* The exception described in paragraph (d)(2)(i) of this section does not apply to property acquired by the corporation while it was subject to tax as a C corporation from another corporation (whether or not a C corporation) in a transaction that results in the acquirer's basis in the property being determined by reference to a C corporation's basis in the property.

(iii) *RICs and REITs previously subject to section 1374 treatment.* If the RIC or REIT had property subject to paragraph (b) of this section before the RIC or REIT became subject to tax as a C corporation as described in paragraph (d)(2)(i) of this section, then paragraph (b) of this section applies to the RIC or REIT upon its requalification as a RIC or REIT, except that the 10-year recognition period with respect to such property is reduced by the portion of the 10-year recognition period that expired before the RIC or REIT became subject to tax as a C corporation and by the period of time that the corporation was subject to tax as a C corporation.

(e) *Special rule for partnerships.* The principles of this section apply to property transferred by a partnership to a RIC or REIT to the extent of any C corporation partner's proportionate share of the transferred property. For example, if a C corporation owns a 20 percent interest in a partnership and that partnership contributes an asset to a REIT in a section 351 transaction, then the partnership shall be treated as a C corporation with respect to 20 percent of the asset contributed to the REIT. If the partnership were to elect deemed sale treatment under paragraph (c) of this section with respect to such transfer, then any gain recognized by the partnership on the deemed sale must be specially allocated to the C corporation partner.

(f) *Effective date.* This section applies to conversion transactions that occur on or after January 2, 2002. For conversion transactions that occurred on or after June 10, 1987 and before January 2, 2002, see § 1.337(d)–5T and § 1.337(d)–6T. This section expires on December 31, 2004.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 5.** In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified or described	Current OMB control No.
* * * * *	
1.337(d)–6T	1545–1672
1.337(d)–7T	1545–1672
* * * * *	

Approved: December 20, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 01–31969 Filed 12–31–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD09–01–122]

RIN 2115–AA98

Special Anchorage Area: Henderson Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule; request for additional comments.

SUMMARY: The purpose of this document is to solicit comments on the appropriate size of the Henderson Harbor Special Anchorage Area. On March 7, 2000, the Coast Guard published a final rule that substantially increased the size of the special anchorage area. Due to concerns from the local community, the Coast Guard is soliciting additional comments regarding the appropriate size of the Special Anchorage Area.

DATES: Comments must be received by April 2, 2002.

ADDRESSES: You may mail comments to Commander (mco–1), Ninth Coast Guard District, 1240 E. Ninth Street, Cleveland, Ohio 44199–2060, or deliver them to room 2069 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 902–6056.

The Ninth Coast Guard District Marine Safety Office maintains the public docket. Comments, and documents indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 2069, Ninth Coast Guard District, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Ronald Branch, Chief, Marine Safety Compliance Operations Branch, Ninth Coast Guard District Marine Safety Office, 1240 E. Ninth Street, Cleveland, Ohio 44199–2060. The phone number is (216) 902–6056.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit data, views, or arguments. Persons submitting comments should include their names and addresses, identify this docket (CGD09–01–122) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Background Information

The Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on November 5, 1999 (64 FR 60399). During the comment period for the NPRM, the Coast Guard received several positive comments from the community regarding the proposed enlargement of the anchorage area. Following the close of the comment period on January 4, 2000, the Coast Guard published a final rule in the **Federal Register** on March 7, 2000 (65 FR 11892).

The final rule extended anchorage area A approximately 1000 feet while keeping the width approximately the same as the existing anchorage area. The additional anchorage area was requested to compensate for the loss of safe anchorage area due to lower water levels. Since vessels must request permission from the Henderson Harbor Town Harbormaster before anchoring or mooring in the special anchorage area, the additional area gave the Town Harbormaster increased deepwater areas in which to direct vessels for safe anchorage.

The Coast Guard has received letters and requests from members of the community, as well as town leaders, indicating that they would like to see an additional change to the anchorage area. Persons submitting comments should do as directed under request for comments above, and reply to the following specific suggested anchorage areas. Form letters simply citing anecdotal evidence or stating support for or opposition to regulations, without providing substantive data or arguments do not supply support for regulations. The following two options are being considered:

1. Continue To Use Current Enlarged Anchorage Area

(a) *Area A.* The area in the southern portion of Henderson Harbor west of the Henderson Harbor Yacht Club bounded by a line beginning at latitude 43°51′ 08.8″ N, longitude 76°12′ 08.9″ W, thence to 43°51′09.0 N, 76°12.19.0 W, thence to 43°51′33.4″ N, 76°12′19.0″ W, thence to 43°51′33.4″ N, 76°12′09.6″ W, thence to the point of the beginning. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Area B.* The area in the southern portion of Henderson Harbor north of Graham Creek Entrance Light bounded by a line beginning at latitude

43°51′21.8″ N, longitude 76°11′58.2″ W, thence to latitude 43°51′21.7″ N, longitude 76°12′05.5″ W, thence to latitude 43°51′33.4″ N, longitude 76°12′06.2″ W, thence to latitude 43°51′33.6″ N, longitude 76°12′00.8″ W, thence to the point of the beginning. All nautical positions are based on North American Datum 1983 (NAD 83).

2. Revert Anchorage Area A Back to Previous Smaller Size

(a) *Area A.* The area in the southern portion of Henderson Harbor west of the Henderson Harbor Yacht club bounded by a line beginning at 43°51′08.8′ N, 76°12′08.9″ W, thence to 43°51′09.0″ N, 76°12′19.0″ W, thence to 43°51′23.8″ N, 76°12′19.0 W, thence to 43°51′23.8″ N, 76°12′09.6″ W, and then back to the beginning. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Area B.* The area in the southern portion of Henderson Harbor north of Graham Creek Entrance Light bounded by a line beginning at latitude 43°51′21.8″ N, longitude 76°11′58.2″ W, thence to latitude 43°51′21.7″ N, longitude 76°12′05.5″ W, thence to latitude 43°51′33.4″ N, longitude 76°12′06.2″ W, thence to latitude 43°51′33.6″ N, longitude 76°12′00.8″ W, thence to the point of the beginning. All nautical positions are based on North American Datum 1983 (NAD 83).

Dated: December 17, 2001.

James D. Hull,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 01–32042 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 252–0312c; FRL–7118–3]

Interim Final Determination That State Has Corrected the Deficiency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a direct final rulemaking fully approving revisions to the California State Implementation Plan. The revisions concern Mojave Desert Air Quality Management rule 1161. EPA has also published a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on EPA's direct final action, EPA will withdraw its direct final rule and will consider any comments received before taking final action on the State's submittal. Based on the proposal, EPA is making an interim final determination by this action that the State has corrected the deficiency for which a sanctions clock began on May 11, 2000. This action will defer the imposition of the offset and highway sanctions. Although this action is effective upon publication, EPA will take comment. If no comments are received on EPA's approval of the State's submittal, the direct final action published in today's **Federal Register** will also finalize EPA's determination that the State has corrected the deficiency that started the sanctions clock. If comments are received on EPA's approval and this interim final action, EPA will publish a final notice taking into consideration any comments received.

DATES: This action becomes effective January 2, 2002. Comments must be received by February 1, 2002.

ADDRESSES: Written comments must be submitted to Andrew Steckel, Rulemaking Section (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, CA 94105

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Mohave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 972–3960

SUPPLEMENTARY INFORMATION:

I. Background

On June 29, 1995, the State submitted MDAQMD Rule 1161, for which EPA published a limited disapproval in the **Federal Register** on May 11, 2000. 65 FR 11674. EPA's disapproval action started an 18-month clock for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted a revised version of this rule on November 8, 2001. EPA is taking direct final action on this submittal pursuant to its modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules section of today's **Federal Register**, EPA has issued a direct final full approval of the State of California's submittal of MDAQMD Rule 1161. In addition, in the Proposed Rules section of today's **Federal Register**, EPA has proposed full approval of the State's submittal.

Based on the proposal set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have been corrected.

This action does not stop the sanctions clock that started for this area on May 11, 2000. However, this action will defer the imposition of the offset and highway sanctions. If EPA's direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed or deferred sanctions. If EPA must withdraw the direct final action based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiencies, EPA will also determine that the State did not correct the deficiency and the sanctions consequences described in the sanctions rule will apply.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiency that started the sanctions clock. Based on this action, imposition of the offset and highway sanctions will be deferred until EPA's direct final action fully approving the

State's submittal becomes effective or until EPA takes action proposing or finally disapproving in whole or part the State submittal. If EPA's direct final action fully approving the State submittal becomes effective, at that time any sanctions clocks will be permanently stopped and any imposed sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this notice is to relieve a restriction. *See* 5 U.S.C. 553(d)(1).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 29, 2001.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 01–32098 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 252–312a; FRL–7118–1]

Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_X) emissions from cement kilns. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on March 4, 2002 without further notice, unless EPA receives adverse comments by February 1, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, Stationary Source Division, Rule

Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.
Mojave Desert AQMD, 14306 Park Avenue, Victorville, CA 92392–2310.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
MDAQMD	1161	Portland Cement Kilns	10/22/01	11/8/01

On November 21, 2001, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule 1161 into the SIP on May 11, 2000. The MDAQMD adopted revisions to the SIP-approved version on October 22, 2001 and CARB submitted them to us on November 8, 2001.

C. What Is the Purpose of the Submitted Rule Revisions?

Rule 1161 applies to cement manufacturing operation within the Federal Ozone non-attainment area regulated by the MDAQMD. This rule controls emission of oxides of nitrogen (NO_X) from Portland cement kilns.

On May 11, 2000, the EPA published a limited approval and limited disapproval of this rule, because some rule provisions conflicted with section 110 and part D of the Clean air Act. Those provisions included the following:

1. Alternative Compliance strategy in section (D).
2. Exemption during start-up and shutdown in section (G)(1)(a).
3. Referring to a rule not approved in the SIP in section (G)(1)(c).

The revisions are designed primarily to correct these deficiencies. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating This Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see sections 182(a)(2)(A) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The MDAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 1161 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
3. Nitrogen Oxides (NO_X) reasonably Available Control Technology (RACT) for the repowering of Utility Boilers, U.S. EPA Office of Air Quality Planning and Standards, March 9, 1994.

B. Does This Rule Meet the Evaluation Criteria?

We believe this rule corrects the deficiencies identified in our May 11, 2000 action and is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by February 1, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on March 4, 2002. This will incorporate this rule into the federally enforceable SIP.

III. Background Information

Why Was This Rule Submitted?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency NO_X rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101– 549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

TABLE 2.—OZONE NONATTAINMENT MILESTONES—Continued

Date	Event
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 29, 2001.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(286) and (c)(287) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(286) [Reserved].

(287) New and amended regulations for the following APCD were submitted on November 8, 2001 by the Governor's designee.

(i) Incorporation by reference.

(A) Mojave Desert Air Quality Management District.

(1) Rule 1161 adopted on October 22, 2001.

* * * * *

[FR Doc. 01–32099 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. 2001–11213, Notice No. 1]

RIN 2130–AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2002

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 2000 rail industry random testing positive rate was .20 percent for drugs and .79 percent for alcohol. Since the industry-wide random drug testing positive rate continues to be below 1.0 percent, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2002 through December 31, 2002 will remain at 25 percent of covered railroad employees. Since the random alcohol

testing violation rate has remained below .5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2002 through December 31, 2002.

DATES: This notice is effective January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20005, (Telephone: (202) 493–6313).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 2002 Random Drug and Alcohol Testing Rates

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year (see 49 CFR 219.602, 219.608).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at 50 percent. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates). FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

In 1994, FRA set the 1995 minimum random drug testing rate at 25 percent because 1992 and 1993 industry drug testing data indicated a random drug testing positive rate below 1.0 percent; since then FRA has continued to set the minimum random drug testing rate at 25 percent as the industry positive rate has consistently remained below 1.0 percent. In this notice, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2002 through December 31, 2002, since the industry random drug testing positive rate for 2001 was .20 percent.

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, if the industry-wide violation rate is less than 1.0 percent but greater than .5 percent, the rate will be 25 percent. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than .5 percent for two calendar years while testing at a higher rate. Since the industry-wide violation rate for alcohol has remained below .5 percent for the last two years, FRA is maintaining the minimum random alcohol testing rate at 10 percent of covered railroad employees for the period January 1, 2002 through December 31, 2002.

This notice sets the minimum random testing rates required next year. Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC, on December 21, 2001.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 01–32047 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 240

[FRA Docket No. RSOR–9, Notice 13]

RIN 2130–AA74

Qualification and Certification of Locomotive Engineers; and Other Proceedings

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the definition of *filing* as used in the Federal Railroad Administration's rule on engineer certification in order to address recent, unavoidable postal delays. Due to terrorism, the Department of Transportation has implemented additional security procedures regarding mail delivery. The purpose of this interim final rule is to temporarily amend the regulation so that parties in adjudicatory proceedings pursuant to subpart E, Dispute Resolution Procedures of part 240 will not be prejudiced by circumstances beyond their control.

DATES: (1) *Effective Date:* This regulation is effective January 2, 2002.

(2) Written comments concerning this rule must be filed no later than March 4, 2002. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments should be submitted to the Docket Clerk, Department of Transportation Central Docket Management System (DMS), Nassif Building, Room Pl–401, 400 Seventh Street, SW., Washington, DC 20590 or, in accordance with the electronic standards and requirements, at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Alan H. Nagler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., RCC–11, Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6049).

SUPPLEMENTARY INFORMATION:

I. Background

In response to acts of terrorism beginning on September 11, 2001, the timely delivery of mail by the United States Postal Service (USPS) and private mail services were negatively impacted by the temporary closing of airline shipping facilities. About one month later, additional delays were caused by more acts of terrorism. On Tuesday, October 16, USPS mail delivery to the Department of Transportation's (DOT) headquarters buildings was halted and did not resume until November 2. DOT's mail was halted in order to take appropriate safety measures concerning the threat of bio-terrorism through mail handling and delivery. The safety of DOT employees and the public clearly override the short-term concern of timely mail delivery. Although it was necessary to establish new security systems, the delay in processing mail may have had unintended consequences.

As envisioned in a notice posted on DMS's website, FRA will take these mail delays into account with respect to rulemaking documents that have comment periods that may have closed before regular mail delivery resumed. FRA will do everything it can to ensure that comments that would otherwise have been received before the close of the comment period are considered. For example, FRA generally has authority to consider late-filed comments and will do so to the extent that it can; FRA will also take note of the postmark date for late-filed comments.

In contrast, federal agencies do not have authority to consider late-filed petitions in adjudicatory proceedings where the filing date requirements have

been established by regulation. This is the situation FRA faces in trying to fairly consider documents filed by parties that (1) have been harmed or delayed by the recent mail disruptions or (2) could potentially be harmed or delayed by these disruptions.

The source of FRA's timeliness issue with regard to engineer certification proceedings is found in the definition of *filing*. That definition is applicable to the adjudicatory proceedings provided for in Subpart E, Dispute Resolution Procedures of the Locomotive Engineer Certification Standards. 49 CFR Part 240. According to section 240.7, ''*[f]iling* means that a document to be filed under this part shall be deemed filed only upon receipt by the Docket Clerk.'' As a result of this definition and the mail delivery delays beginning September 11, it is possible that a party could have attempted to file a document by mail, the document could have been received by DOT, and yet the document may not have been date stamped as received until days or weeks later. In order to prevent any unfair and unintended consequences, FRA is relaxing this filing requirement to permit the date mailing was completed (i.e., the postmark date unless the filer proves otherwise) to take the place of the receipt date during this unique state of alert.

This change in the filing requirements will ensure that documents mailed in a timely fashion will not be considered late if received after the due date by FRA's Docket Clerk pursuant to sections 240.403 and 240.405, or by DMS's Docket Clerk pursuant to sections 240.407 and 240.409, and by FRA's Administrator pursuant to section 240.411. The amended rule reflects this policy by adding the phrase ''or if sent by mail on or after September 4, 2001, the date mailing was completed'' to the definition. This change covers items postmarked on or after September 4, 2001 by the USPS or sent by other mail services on or after that date. By including all items sent by that date, FRA hopes to effectively include all documents that parties attempted to timely file under the original filing rule without being either under-inclusive or over-inclusive.

In addition, filers are encouraged to use the electronic submission system on the dockets Web page (*http://dms.dot.gov*) by clicking on ''ES Submit'' and following the online instructions. This option is available for filing hearing requests and documents pursuant to sections 240.407 and 240.409. A party filing electronically should note that the rule has not been amended to accept late electronic filings. Electronic filings that are received after the specified dockets facility hours shall be deemed to be constructively received on the next dockets facility business day. *See* 14 CFR 302.3.

Furthermore, FRA rewrote the remaining part of the definition to more clearly state what is meant by *filing* without using the defined word itself in the definition. Thus, ''*[f]iling* means that a document to be filed under this part shall be deemed filed upon receipt by the Docket Clerk'' has been amended to read that ''*[f]ile, filed and filing* mean submission of a document under this part on the date when the Docket Clerk receives it * * *'' Both phrases have the same meaning. In addition, the rule was amended to reflect that all of the tenses of ''file'' are covered by the definition.

II. Regulatory Evaluation

A. Public Proceedings

The Administrative Procedure Act, specifically 5 U.S.C. 553(b)(3)(B), provides that a notice and comment period is not required when ''the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Accordingly, this amendment to part 240 is issued without notice and comment. FRA has chosen this course of action because notice and comment under these circumstances would be impracticable, unnecessary, and contrary to the public interest. The implementation of new security systems vis-a-vis mail handling in response to national security interests requires emergency action. If FRA did not amend this definition, it is foreseeable that parties relying on USPS or other mail services would be prejudiced. FRA is making this rule effective immediately for the same reasons it is dispensing with the need for prior comment.

Despite the need for prompt action, FRA is soliciting comments on this rule and will consider those comments in determining whether there is a need to take further action to improve these regulations. If comments persuade FRA that additional amendment to the definition is necessary, it will address them in a subsequent notice. Written comments must be submitted no later than 60 days after publication in the **Federal Register**, but late comments will be considered to the extent practicable.

B. Regulatory Impact

E.O. 12866 and DOT Regulatory Policies and Procedures

This interim final rule has been evaluated in accordance with existing regulatory policies and is considered to be nonsignificant under Executive Order 12866 and is not significant under the DOT policies and procedures (44 FR 11034; February 26, 1979).

C. Regulatory Flexibility Act

FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small railroads are subject to this regulation, the economic impact of this amendment to the rule will not be significant since it only modifies a definition involved in dispute resolution proceedings conducted by FRA. The provisions do not make any changes to the way that a railroad would conduct its own proceedings pursuant to this part. This technical change should prevent injustice that would otherwise result from the actions of the DOT to ensure the safety of mail it receives.

This interim final rule will have no direct impact on small units of government, businesses, or other organizations. State rail agencies are not required to participate in the portion of part 240 that includes the definition.

D. Paperwork Reduction Act

There are no new collection of information requirements contained in this rule and, in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the record keeping and reporting requirements already contained in this rule have been approved by the Office of Management and Budget. The OMB approval number was published in a previous amendment to part 240 and can be found in section 240.13. The information collection requirements of this rule became effective on June 19, 1991, and were later amended on April 9, 1993.

E. Environmental Impact

FRA has evaluated this regulation in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from

detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly effecting the quality of the human environment.

F. Federalism Implications

FRA believes that it is in compliance with Executive Order 13132. This rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This regulation will not have federalism implications that impose compliance costs on State and local governments.

List of Subjects in 49 CFR Part 240

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

Therefore, in consideration of the foregoing, FRA amends part 240, Title 49, Code of Federal Regulations as follows:

PART 240—[AMENDED]

■ 1. The authority citation for Part 240 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135; 49 CFR 1.49.

* * * * *

■ 2. Section 240.7 is amended by removing the definition of *filing* and adding the following definition in alphabetical order:

§ 240.7 Definitions.

As used in this part—

* * * * *

File, filed and filing mean submission of a document under this part on the date when the Docket Clerk receives it, or if sent by mail on or after September 4, 2001, the date mailing was completed.

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Issued in Washington, DC, on December 21, 2001.

Allan Rutter,

Administrator.

[FR Doc. 01–32049 Filed 12–31–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–47–AD; Amendment 39–12564; AD 2001–25–11]

RIN 2120–AA64

Airworthiness Directives; Pratt and Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes two airworthiness directives (AD's), AD 99–17–16 and AD 2001–15–12. Those AD's both apply to Pratt and Whitney (PW) model PW4000 series turbofan engines. AD 99–17–16 generally requires that operators limit the number of PW4000 engines with potentially reduced stability margin to no more than one engine on each airplane, and requires initial and repetitive on-wing and test cell engine stability tests. It also establishes reporting requirements for stability testing data. AD 2001–15–12 also limits the number of PW4000 engines with potentially reduced stability on each airplane by applying rules based on airplane and engine configuration. In addition, AD 2001–15–12 also requires that engines that exceed high pressure compressor (HPC) cyclic limits based on cycles-since-overhaul (CSO) are removed from service, limits the number of engines with the HPC cutback stator (CBS) configuration to one on each airplane, and establishes a minimum rebuild standard for engines that are returned to service. These AD's were prompted by reports of surges during takeoff on airplanes equipped with PW4000 series turbofan engines.

This amendment continues the limitation on the number of PW4000 engines with potentially reduced stability on each airplane to no more than one, and introduces a new cool engine fuel spike test to allow engines to be returned to service after having exceeded cyclic limits or undergone work in the shop. This AD also continues the limitation on the number of engines with HPC CBS configuration to one on each airplane, places a cyclic limit on how long a CBS engine may remain in service, and establishes a minimum rebuild standard for engines that are returned to service. This amendment is prompted by further analyses of compressor surges in PW4000 engines, and continuing reports of surges in the PW4000 fleet. The actions specified by this AD are intended to prevent engine power losses due to HPC surge.

DATES: Effective January 17, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 17, 2002.

Comments for inclusion in the Rules Docket must be received on or before March 4, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, (860)565–6600, fax (860)565–4503. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: Since 1999, the FAA has noted a growing number of takeoff (T/O) surge events in Pratt and Whitney PW4000 series turbofan engines. These surges typically occur within 20 to 60 seconds after throttle advance to T/O power, a critical phase of flight. These events have resulted in numerous aborted T/O's, in-flight engine shutdowns, and diverted flights. To date, two events have occurred where two engines have surged at once, the latest in March 2001 involving a twin-engine airplane on takeoff.

The investigation into these surges revealed that these events are due to low stability resulting from open clearances in the aft stages of the high pressure compressor (HPC). The most open clearance condition in the aft stages of the HPC due to temperature differences between the compressor rotor and the compressor stator occurs about 20–60 seconds after the throttle is advanced for T/O. A binding of the compressor flowpath and stator segments within the outer case may add to this normal thermal mismatch condition, resulting in uneven wear patterns and areas of increased locally open clearances. Further investigation revealed common factors that can increase the likelihood for a single or multiple-engine surge event. These ''common factors'' have been identified as Engine Pressure Ratio (EPR), and ambient temperature and pressure. Pratt and Whitney (PW) has used this information to better understand the occurrence of the two dual surge events experienced to date in the PW4000 series fleet.

Since 1999, the FAA has issued five AD's that apply to the PW4000 series engines to address this surge condition. On August 12, 1999, the FAA issued AD 99–17–16 (64 FR 45426, dated August 20, 1999) to require that operators limit the number of PW4000 engines with potentially reduced stability margin to no more than one engine on each airplane, and require initial and repetitive on-wing and test cell engine stability tests. AD 99–17–16 also establishes reporting requirements for stability testing data.

On October 19, 2000, the FAA issued AD 2000–22–01 (65 FR 63793, dated October 25, 2000), to limit the number of engines to one on each airplane with

the HPC in a configuration known as the cut-back stator (CBS) configuration. AD 2000–22–01 established cyclic limits for the removal of HPC's in the CBS configuration and prohibited operators from using engines with HPC modules that incorporated the CBS configuration after the effective date of that AD. AD 2000–22–01 was later superseded by AD 2001–15–12.

On April 13, 2001, the FAA issued emergency AD 2001–08–52 in response to the March 2001, dual-engine surge event. That emergency AD restricted the use of and, ultimately, required the removal of certain PW4000 engines identified by serial number. Those engines were all suspect of reduced stability, and, therefore, at higher risk of surges. Emergency AD 2001–08–52 was superseded by AD 2001–09–07.

On April 20, 2001, the FAA issued AD 2001–09–07 (66 FR 21083, dated April 27, 2001), to supersede emergency AD 2001–08–52. AD 2001–09–07 made changes to the list of serial numbers identifying the affected engines, clarified the requirements of the emergency AD, and added engines with the HPC CBS configuration to the restrictions contained in the emergency AD to limit the number of PW4000 engines to no more than one engine with potentially reduced stability on each airplane and removal of certain PW4000 engines before exceeding cyclic limits that are determined by airplane model and engine configuration. AD 2001–09–07 was also superseded by AD 2001–15–12.

Finally, on July 17, 2001, the FAA issued AD 2001–15–12 (66 FR 38896, dated July 26, 2001) that superseded both AD 2000–22–01 and AD 2001–09–07. AD 2001–15–12 was issued as an interim measure to maintain fleet safety while an improved stability screening test was created, which would allow improved discrimination of low-surge margin engines. AD 2001–15–12 continued the limitation on the number of engines with the HPC CBS configuration and with potentially reduced stability on each airplane, but based those limitations on an evaluation by configuration, installation, thrust rating and other variables. That evaluation was used to create cyclic limits for each airplane and engine combination to maintain the risk of a multiple engine surge at an acceptable level. AD 2001–15–12 also introduced a minimum build standard for engines returned to service. Since AD 2001–15–12 was issued, the FAA has received reports of 11 additional takeoff surges in the PW4000 fleet. This amendment supersedes AD 2001–15–12 and AD 99–17–16. The FAA has continued to evaluate the PW4000 fleet surge data and improve its understanding of the PW4000 fleet's engine surge behavior, and has determined that the requirements of currently effective AD's are not sufficient to meet the original safety intent of those AD's. An evaluation of the PW4000 fleet by configuration, installation, thrust rating and utilizing the ''common factor'' variables was performed to determine which subpopulations of engines are most prone to high power takeoff surges. As a result of this evaluation, cyclic limits were created for each airplane and engine combination to maintain the risk of multiple-engine surge risk at an acceptable level. An improved off-wing (test cell) stability margin verification test was developed to allow return to service of engines, which were removed for exceeding the cycles-since-overhaul threshold, or that have had flowpath work performed while in the shop.

Although AD 2001–15–12 was adopted without notice, the FAA invited comments on the rule. The FAA received one comment from an operator of PW4000 engines. The operator notes that the AD contains a requirement that engines which exceed the specified cyclic limits be removed from service within 50 cycles after the effective date of the AD and ''thereafter.'' The operator requests that the FAA clarify whether that initial grace period of 50 cycles is available to only engines that have exceeded the cyclic limits on the effective date of the AD or if the 50-cycle grace period is also be available to engines that reach the cyclic limits after the effective date of the AD. This AD contains similar cyclic limits and a similar initial grace period. The FAA has changed the wording of the requirement to make clearer that the initial grace period applies only to those engines that would otherwise be required to be removed immediately upon the AD becoming effective. The FAA has determined that allowing those engines to operate for an additional 50 cycles will not result in an unacceptable level of safety while mitigating some of the cost of an unscheduled engine removal. As engines approach the cyclic limits after the effective date of the AD, however, the FAA expects that operators will schedule engine removals so that no unscheduled removals will be necessary.

FAA's Determination of an Unsafe Condition and Required Actions

Since the unsafe condition described is likely to exist or develop on other PW4000 series turbofan engines of the same type design, this AD is being issued to prevent engine power losses due to HPC surge events. This AD requires:

- Limiting the number of engines with the HPC CBS configuration to one on each airplane prior to further flight after the effective date of this AD, and
- Limiting the number of engines that exceed cyclic limits, based upon airplane and engine configuration, within 50, 100 or 200 CIS after the effective date of this AD, and
- A minimum rebuild standard for engines that are returned to service.

This AD also allows engines removed from service due to exceeded cyclic limit to be returned to service after either an HPC overhaul, or successfully completing a cool engine fuel spike stability evaluation.

Interim Action

The actions specified in this AD are considered interim action and further action is anticipated based on the continuing investigation of the HPC surges. This AD has been coordinated with the FAA Transport Airplanes Directorate.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–47–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in airplanes, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Airplanes, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–12346 (66 FR 38896, dated July 26, 2001) and Amendment 39–11263 (64 FR 11263, dated August 20, 1999), and by adding a new airworthiness directive (AD), Amendment 39–12564, to read as follows:

2001–25–11 Pratt and Whitney: Amendment 39–12564. Docket No. 2000–NE–47–AD. Supersedes Amendment 39–12346, and Amendment 39–11263.

Applicability: This airworthiness directive (AD) is applicable to Pratt and Whitney (PW) model PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines. These engines are installed on, but not limited to, certain models of Airbus Industrie A300, Airbus Industrie A310, Boeing 747, Boeing 767, and McDonnell Douglas MD–11 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (o) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent engine power losses due to high pressure compressor (HPC) surge, do the following:

(a) When complying with this AD, determine the configuration and category of each engine on each airplane as follows:

(1) Use the following table 1 to determine the configuration of the engine:

TABLE 1.—ENGINE CONFIGURATION LISTING

Configuration	Configuration designator	Description
(i) Phase 1 without high pressure turbine (HPT) 1st turbine vane cut back (1TVCB).	A	Engines that did not incorporate the Phase 3 configuration at the time they were originally manufactured, or have not been converted to Phase 3 configuration; and have not incorporated HPT 1TVCB using any revision of SB PW4ENG 72–514.
(ii) Phase 1 with 1TVCB	B	Same as configuration (1) except that HPT 1TVCB has been incorporated using any revision of SB PW4ENG 72–514.
(iii) Phase 3, 2nd Run	C	Engines that incorporated the Phase 3 configuration at the time they were originally manufactured, or have been converted to the Phase 3 configuration during service; and that have had at least one HPC overhaul since new.
(iv) Phase 3, 1st Run	D	Same as configuration (3) except that that the engine has not had an HPC overhaul since new.
(v) HPC Cutback Stator Configuration Engines	E	Engines that currently incorporate any revision of SB's PW4ENG72–706, PW4ENG72–704, or PW4ENG72–711
(vi) Engines that have passed Testing-21	F	Engines which have successfully passed Testing-21 performed in accordance with paragraph (h)(1) of this AD. Once an engine has passed a Testing-21, it will remain a Configuration F engine until the HPC is overhauled, or is replaced with a new or overhauled HPC.

(2) Use the following Table 2 to determine the category of Airbus engines:

TABLE 2.—AIRBUS AIRPLANE ENGINE CATEGORY LISTING

Engine model	Category	Engine serial number (SN)
(i) PW4156, PW4156A, and PW4158 engines.	1	717201, 717205, 717702, 717703, 717710, 717752, 717788, 717798, 717799, 724023, 724026, 724027, 724033, 724034, 724036, 724037, 724040, 724041, 724044, 724045, 724048, 724049, 724050, 724051, 724052, 724055, 724056, 724059, 724061, 724062, 724063, 724065, 724067, 724073, 724074, 724075, 724079, 724088, 724089, 724090, 724091, 724094, 724095, 724551, 724552, 724555, 724556, 724557, 724558, 724561, 724562, 724563, 724564, 724567, 724568, 724569, 724570, 724571, 724572, 724573, 724574, 724575, 724576, 724577, 724578, 724640, 724806, 724807, 724808, 724809, 724811, 724820, 724821, 724827, 724833, 724835, 724836, 724840, 724841, 724848, 724849, 724855, 724857, 724858, 724861, 724862, 724865, 724866, 724868, 724909, 724910, 724913, 724914, 724924, 724925, 724926, 724927, 727912, 728519, 728520, 728521, 728522, 728523, 728524, 728525, 728526, 728527, 728528, 728534, 728535, 728536, 728537, 728538, 728539, 728540, 728541, 728542, 728543, 728544, 728545, 728546, 728547, 728548, 728549, 728550, 728551, 728552, 728553, 728554, 728557, 728558, 728559, 728560, 728561, 728562, 728563, 728564.
(ii) PW4158 engines	2	717704, 724001, 724002, 724004, 724005, 724006, 724007, 724008, 724009, 724010, 724011, 724019, 724020, 724031, 724035, 724038, 724039, 724042, 724043, 724047, 724068, 724069, 724071, 724076, 724077, 724080, 724085, 724086, 724087, 724092, 724093, 724096, 724097, 724801, 724802, 724803, 724804, 724805, 724813, 724814, 724819, 724823, 724824, 724825, 724826, 724828, 724831, 724832, 724843, 724846, 724847, 724851, 724852, 724853, 724854, 724859, 724860, 724863, 724864, 724867, 724869, 724870, 724871, 724872, 724873, 724874, 724875, 724876, 724880, 724881, 724882, 724883, 724884, 724885, 724886, 724887, 724888, 724889, 724890, 724892, 724893, 724894, 724895, 724896, 724897, 724898, 724899, 724900, 724932, 727315, 727436, 728501, 728502, 728503, 728504, 728505, 728506, 728507, 728508, 728509, 728510, 728511, 728515, 728518, 728531, 728532, 728533.
(iii) PW4156, PW4156A, and PW4158.	3	All others not listed by SN in this Table.

Engines Used on Boeing Airplanes

(b) Except as provided in paragraph (g) of this AD, within 50 airplane cycles after the effective date of this AD, limit the number of engines that exceed the engine cycles-since-new (CSN), engine cycles-since-overhaul (CSO), or engine cycles since passing Testing-21 (CST) limits listed in the following Table 3, to:

(1) No more than one engine per airplane for dual-engine airplanes.

(2) No more than two engines per airplane for three-engine airplanes.

(3) No more than three engines per airplane for four-engine airplanes:

TABLE 3.—ENGINE STAGGER LIMITS FOR BOEING AIRPLANES

Configuration designator	B747–PW4056	B767–PW4052	B767–PW4056	B767–PW4060/ PW4060A/PW4060C/ PW4062	MD–11 PW4460/ PW4462
A	1,400 CSN or CSO	3,000 CSN or CSO	1,600 CSN or CSO	900 CSN or CSO	800 CSN or CSO.
B	2,100 CSN or CSO	4,400 CSN or CSO	2,800 CSN or CSO	2,000 CSN or CSO	1,200 CSN or CSO.
C	2,100 CSN or CSO	4,400 CSN or CSO	2,800 CSN or CSO	2,000 CSN or CSO	1,300 CSN or CSO.
D	2,600 CSN or CSO	4,400 CSN or CSO	3,000 CSN or CSO	2,200 CSN or CSO	2,000 CSN or CSO.
E	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO.
F	800 CST	800 CST	800 CST	800 CST	800 CST.

(c) Except as provided in paragraph (g) of this AD, within 100 airplane cycles after the effective date of this AD, limit the number of engines that exceed the CSN, CSO, or CST limits listed in Table 3, to:

(1) No more than one engine per airplane for three-engine airplanes.

(2) No more than two engines per airplane for four-engine airplanes.

(d) Within 200 airplane cycles after the effective date of this AD, limit the number of engines that, exceed the CSN, CSO, or CST limits listed in Table 3, to no more than one engine per airplane for four-engine airplanes.

(e) Thereafter, ensure that no more than one engine per airplane exceeds the CSN, CSO, or CST limit listed in Table 3.

Engines Used on Airbus Airplanes

(f) For engines installed on Airbus airplanes, do the following:

(1) Within 50 airplane cycles after the effective date of this AD, limit the number of engines that exceed, the CSN, CSO, or CST limits listed in the following Table 4, to no more than one engine per airplane:

TABLE 4.—ENGINE STAGGER LIMITS FOR AIRBUS AIRPLANES

Configuration designator	A310 PW4156 and PW4156A and A300 PW4158 Category 1	A300 PW4158 Category 2	A310 PW4156 and PW4156A and A300 PW4158 Category 3	A310 PW4152
A	900 CSN or CSO	1,850 CSN or CSO	500 CSN or CSO	1,050 CSN or CSO
B	2,200 CSN or CSO	4,400 CSN or CSO	1,600 CSN or CSO	4,000 CSN or CSO
C	2,200 CSN or CSO	4,400 CSN or CSO	1,600 CSN or CSO	4,000 CSN or CSO
D	4,400 CSN or CSO	4,400 CSN or CSO	4,400 CSN or CSO	4,400 CSN or CSO
E	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO
F	800 CST	800 CST	800 CST	800 CST

(2) Thereafter, ensure that no more than one engine per airplane, that exceeds the CSN, CSO, or CST limit listed in Table 4.

Configuration E Engines

(g) For all configuration E engines, do the following:

(1) Before further flight, limit the number of engines with configuration E from Table 1 of this AD to one on each airplane.

(2) Remove all engines with configuration E from service before accumulating 1,300 CSN or cycles-since-conversion to configuration E, whichever is later.

Stability Testing Requirement

(h) Engines removed from service in accordance with paragraphs (b), (c), (d) or (f) of this AD may be returned to service under the following conditions:

(l) After passing a cool-engine fuel spike stability test (Testing-21) that has been done in accordance with one of the following PW4000 Engine Manual (EM) Temporary Revisions (TR's) as applicable, except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge:

(i) PW4000 PW EM 50A443, Temporary Revision No. 71–0026, dated November 14, 2001.

(ii) PW EM 50A822, Temporary Revision No. 71–0018, dated November 14, 2001.

(iii) PW EM 50A605, Temporary Revision No. 71–0035, dated November 14, 2001.

(iv) Engines tested before the effective date in accordance with PW IEN 96KC973D, dated October 12, 2001, meets the requirements of Testing-21, or

(2) The HPC was replaced with an HPC that is new from production with no time in service, or

(3) An engine whose HPC has been overhauled, or replaced with an overhauled HPC.

Minimum Build Standard

(i) For any engine that undergoes an HPC overhaul after the effective date of this AD, do the following:

(1) Inspect the HPC mid-hook and rear-hook of the HPC inner case for wear in accordance with PW4000 Clean, Inspect and Repair (CIR) Manual PN 51A357, Section 72–35–68 Inspection/Check–04, Indexes 8–11, revised September 15, 2001. If the HPC rear hook is worn beyond serviceable limits, replace the HPC inner case rear hook with an improved durability hook in accordance with PW SB PW4ENG72–714, issued June 27, 2000. If the HPC inner case mid hook is worn beyond serviceable limits, repair the HPC inner case mid hook in accordance with any revision of PW4000 CIR PN 51A357 Section 72–35–68, Repair–16, issued June 15, 1996.

(2) After the effective date of this AD, any engine that undergoes an HPC overhaul may not be returned to service unless it meets the build standard of the following PW SB's: PW4ENG 72–484, PW4ENG 72–486, PW4ENG 72–514, and PW4ENG 72–575. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG 72–514.

(j) After the effective date of this AD, any engine that undergoes separation of the HPC and HPT modules must not be installed on an airplane unless it meets the build standard of PW SB PW4ENG 72–514. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG 72–514.

(k) After the effective date of this AD, Testing-21 must be performed in accordance with paragraph (h) of this AD, before an engine can be returned to service after having undergone maintenance in the shop, except under any of the following conditions;

(1) The HPC was overhauled, or replaced with an overhauled HPC, or

(2) The HPC was replaced with an HPC that is new from production with no time in service, or

(3) The shop visit did not result in the separation of a major engine flange, with the exception of the ''A'' flange or ''T'' flange.

(l) When a thrust rating change has been made by using the Electronic Engine Control (EEC) programming plug, or an installation change has been made, during an HPC overhaul period, use the lowest cyclic limit associated with any configuration used during that overhaul period.

(m) For engines that experience a surge, do the following:

(1) For engines that experience a Group 3 takeoff surge, remove the engine from service and perform an HPC overhaul.

(2) For engines that experience a surge at Engine Pressure Ratios (EPR's) greater than 1.25, remove the engine from service within 25 cycles and perform Testing-21.

Definitions

(n) For the purposes of this AD, the following definitions apply:

(1) An HPC overhaul is defined as restoration of the HPC stages 5 through 15 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(2) A Phase 3 engine is identified by a (-3) suffix after the engine model number on the data plate if incorporated at original manufacture, or a ''CN'' suffix after the engine serial number if the engine was converted using PW SB's PW4ENG 72–490, PW4ENG 72–504, or PW4ENG 72–572 after original manufacture.

(3) A Group 3 takeoff surge is defined as the occurrence of any of the following engine symptoms during takeoff operation (either at reduced, derated or full rated takeoff power setting) after takeoff power set, which can be attributed to no specific and correctable fault condition after following aircraft level surge-during-forward-thrust troubleshooting procedures:

(i) Engine noises, including rumblings and loud ''bang(s).''

(ii) Unstable engine parameters (EPR, N1, N2, and fuel flow) at a fixed thrust setting.

(iii) Exhaust gas temperature (EGT) increase.

(iv) Flames from the inlet, the exhaust, or both.

Alternative Methods of Compliance

(o) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(p) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Testing-21 Reports

(q) Report the results of the cool engine fuel spike stability assessment tests (Testing-21) to the ANE–142 Branch Manager, Engine Certification Office, 12 New England Executive Park, Burlington, MA 01803–5299, or by electronic mail to 9-ane-surge-ad-reporting@faa.gov. The following data must be reported:

(1) Engine serial number.

(2) Engine configuration designation per Table 1.

(3) Date of the cool engine fuel spike stability test.

(4) HPC Serial Number, and HPC time and cycles since new and since compressor overhaul at the time of the test.

(5) Results of the test (Pass/Fail).

Documents That Have Been Incorporated by Reference

(r) The inspection shall be done in accordance with the following Pratt & Whitney service bulletin (SB), Internal Engineering Notice (IEN), Temporary Revisions (TR's), Clean, Inspection, and Repair Manual (CIR) repair procedures:

Document No.	Pages	Revision	Date
PW SB PW4ENG72–714	1–2	1	November 8, 2001.
	3	Original	June 27, 2000.
	4	1	November 8, 2001
	5–12	Original	June 27, 2000.
Total pages: 12.			
PW IEN 96KC973D	All	Original	October 12, 2001.
Total pages: 19.			
PW TR 71–0026	All	Original	November 14, 2001.
Total pages: 24.			
PW TR 71–0018	All	Original	November 14, 2001.
Total pages: 24.			
PW TR 71–0035	All	Original	November 14, 2001.
Total pages: 24.			
PW CIR 51A357, Section 72–35–68, Inspection/Check–04, Indexes 8–11.	All	Original	September 15, 2001.
Total pages: 5.			
PW CIR 51A357, Section 72–35–68, Repair 16	All	Original	June 15, 1996.
Total pages: 1.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, (860)565–6600, fax (860)565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(s) This amendment becomes effective on January 17, 2002.

Issued in Burlington, Massachusetts, on December 12, 2001.

Robert G. Mann,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–31296 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34–45194]

Commission Guidance on the Scope of Section 28(e) of the Exchange Act

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: We are publishing interpretive guidance on the application of Section 28(e) of the Securities Exchange Act of 1934 (''Exchange Act''). This section provides a safe harbor to money managers who use the commission dollars of their advised accounts to obtain research and brokerage services. The guidance we are publishing today clarifies that the term ''commission'' for purposes of the Section 28(e) safe harbor encompasses, among other things, certain transaction costs, even if not denominated a ''commission.''

EFFECTIVE DATE: The guidance is effective on January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel; Joseph Corcoran, Special Counsel, (202) 942–0073, Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

If money managers use commission dollars of their advised accounts to obtain research and brokerage services, Section 28(e) prevents them from being held to have breached a fiduciary duty, provided the conditions of the section are met.[1] Previously, the Commission interpreted Section 28(e) to be available only for research and brokerage services obtained in relation to commissions paid to a broker-dealer acting in an ''agency'' capacity.[2] That interpretation prevented money managers from relying on the safe harbor for research and brokerage services obtained in relation to fees charged by market makers when they executed transactions in a ''principal'' capacity.

The Nasdaq Stock Market, Inc. (''Nasdaq'') asked us to reconsider this interpretation of Section 28(e). In particular, Nasdaq urged us to interpret the Section 28(e) safe harbor to apply not just to research and brokerage services obtained in relation to commissions on agency transactions, but also to such services obtained in relation to fully and separately disclosed fees on certain riskless principal transactions effected by National Association of Securities Dealers, Inc. (''NASD'') members and reported under certain NASD trade reporting rules.[3] In Nasdaq's view, the recent amendments to its trade reporting rules for certain riskless principal transactions support a modification of the Commission's interpretation of Section 28(e).[4]

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[1] 15 U.S.C. 78bb(e).

[2] Investment Advisers Act Release No. 1469 (February 14, 1995), 60 FR 9750 (February 21, 1995). In this release, the Commission stated, ''[t]he safe harbor does not encompass soft dollar arrangements under which research services are acquired as a result of principal transactions,'' adopting a position originally outlined in a 1990 staff letter, authorized by the Commission, to the Department of Labor. *See* Letter re: *Section 28(e) of the Securities Exchange Act of 1934* (July 25, 1990). *See also* Investment Company Act Release No. 20472 (August 11, 1994), 59 FR 42187 (August 17, 1994).

[3] *See* Letter from Hardwick Simmons, Chief Executive Officer, The Nasdaq Stock Market, Inc. to Harvey L. Pitt, Chairman, Commission, dated September 7, 2001.

[4] *See* Exchange Act Release Nos. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999) (File No. SR–NASD–98–59); 41606 (July 8, 1999), 64 FR 38226 (July 15, 1999) (File No. SR–NASD–98–08); 43303 (September 19, 2000), 65 FR 57853 (September 26, 2000) (File No. SR–NASD–00–52). These filing amended NASD Rules 4632 (the trade reporting rule for Nasdaq National Market securities), 4642 (the trade reporting rule for Nasdaq SmallCap Market securities), and 6420 (the trade reporting rule for eligible securities).

II. Discussion

Section 28(e) of the Exchange Act prevents a person who exercises investment discretion with respect to an account from being ''deemed to have acted unlawfully or to have breached a fiduciary duty * * * solely by reason of his having caused the account to pay a [broker-dealer] an amount of commission for effecting a securities transaction in excess of the amount of commission another [broker-dealer] would have charged for effecting that transaction, if such person determined in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services provided by such [broker-dealer]. * * *'' [5]

This release clarifies the meaning of the term ''commission'' in the context of Section 28(e), and, therefore, the type of fees paid by a managed account to a broker-dealer for a securities transaction that may be used by the money manager to obtain research and brokerage services within the safe harbor. As noted above, the Commission to date has interpreted the term ''commission'' to include fees paid by a managed account to a broker-dealer for effecting a transaction in an agency capacity. This interpretation is based on the understanding that the term ''commission'' generally connotes an agency transaction.[6] However, that interpretation is not mandated by the language of the statute. In fact, the reference to ''dealer'' in Section 28(e) might suggest that the term ''commission'' includes fees paid to a broker-dealer acting in other than an agency capacity.

The meaning of the term ''commission'' in Section 28(e) is informed by the requirement that a money manager relying on the safe harbor must determine in good faith that the amount of ''commission'' is reasonable in relation to the value of research and brokerage services received. This requirement presupposes that a ''commission'' paid by the managed account is quantifiable in a verifiable way and is fully disclosed to the money manager. When we issued our guidance in 1995, an agency transaction had more cost transparency than a principal transaction because frequently embedded within the cost of a principal transaction was undisclosed compensation to the dealer. In other words, fees on principal transactions were not quantifiable and fully disclosed in a way that would permit a money manager to determine that the fees were reasonable in relation to the value of research and brokerage services received.

Since that time, the NASD has modified its trade reporting rules for certain riskless principal transactions. Currently, NASD Rule 4632 (applicable to Nasdaq National Market securities), NASD Rule 4642 (applicable to Nasdaq SmallCap Market securities), and NASD Rule 6420 (applicable to ''eligible securities'') require a riskless principal transaction in which both legs are executed at the same price (''Eligible Riskless Principal Transaction'') to be reported once, in the same manner as an agency transaction, exclusive of any markup, markdown, commission equivalent, or other fee.[7] Coupled with Exchange Act Rule 10b–10, this form of trade reporting means that a money manager agreeing to an Eligible Riskless Principal Transaction receives the same price as received in the offsetting trade and that this price is disclosed on a confirmation that also fully discloses the remuneration to the NASD member for effecting this transaction.[8] Thus, a money manager opting for an Eligible Riskless Principal Transaction would now be informed of the entire amount of a market maker's charge for effecting the trade.

In recognition of the transparency achieved in the Nasdaq market for certain riskless principal transactions, which allows a money manager to make the necessary determination under Section 28(e), we are modifying our interpretation of Section 28(e). Specifically, we now interpret the term ''commission'' in Section 28(e) of the Exchange Act to include a markup, markdown, commission equivalent or other fee paid by a managed account to a dealer for executing a transaction where the fee and transaction price are fully and separately disclosed on the confirmation and the transaction is reported under conditions that provide independent and objective verification of the transaction price subject to self-regulatory organization oversight.

Fees paid for Eligible Riskless Principal Transactions that are reported under NASD Rule 4632, 4642, or 6420 would fall within this interpretation.[9] Fees paid to an NASD member for effecting an Eligible Riskless Principal Transaction are distinguishable from fees paid on traditional riskless principal transactions as well as traditional principal transactions involving a dealer's inventory. Fees on other riskless principal transactions can include an undisclosed fee (reflecting a dealer's profit on the difference in price between the first and second legs of the transaction). Fees on traditional principal transactions also can include an undisclosed fee based on some portion of the spread. In addition, the price of the trade, if reported, is to some degree within the control of the dealer. In contrast, fees on Eligible Riskless Principal Transactions that are reported under NASD Rule 4632, 4642, or 6420 must be fully and separately disclosed. Moreover, the price of the trade is validated by the offsetting leg of the transaction.

Required disclosure of fees under confirmation rules and reporting of the trade under self-regulatory organization rules at a single price for both offsetting transactions, which provides independent verification of this price, give money managers information about fees and trade prices sufficient to make the determination of reasonableness of these charges. It is therefore reasonable to treat such fees as a ''commission'' for purposes of Section 28(e) only. As other markets develop equivalent regulations to ensure equivalent transparency, transaction charges in those markets that meet the requirements of this interpretation will be considered to fall within the interpretation.

[5] 15 U.S.C. 78bb(e). *See also* Exchange Act Release No. 23170 (April 23, 1986), 51 FR 16004 (April 30, 1986).

[6] In adopting the position in 1995 that Section 28(e) does not encompass principal transactions, we noted a 1990 staff letter to the Department of Labor. In that letter, the Division of Market Regulation stated that, ''Section 28(e) refers to 'commissions' only, which connote transactions effected on an agency basis, and does not refer to markups or markdowns, which would more clearly have suggested that Congress intended to extend the safe harbor to principal transactions.'' *See supra* note 2.

[7] *See* NASD Rules 4632(d)(3)(B) (for Nasdaq Market securities), 4642(d)(3)(B) (for Nasdaq SmallCap Market securities), and 6420(d)(3)(B) (for eligible securities). Each of these rules defines a riskless principal transaction as a ''transaction in which a member, after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell.''

[8] Exchange Act Rule 10b–10(a)(2)(ii), 17 CFR 240.10b–10(a)(2)(ii). Nasdaq SmallCap Market securities are subject to Exchange Act Rule 10b–10. *See* Exchange Act Release No. 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001).

[9] Riskless principal transactions in the debt market, however, are not currently subject to confirmation and reporting requirements that meet these conditions, under either NASD or Commission rules, and therefore would not be within the Section 28(e) safe harbor. Such transactions do not afford money managers the level of transparency necessary to determine if the remuneration paid is reasonable in relation to the value received, as required to rely on Section 28(e). The interpretation does not currently extend to other securities that may have similar reporting requirements, but that do not have the same confirmation requirements for market makers, *e.g.*, OTC Bulletin Board stocks, Pink Sheet stocks, and convertible securities.

III. Conclusion

For the foregoing reasons, we find that this interpretation is consistent with Section 28(e) of the Exchange Act and the requirements of that section.

List of Subjects in 17 CFR Part 241

Securities.

Amendments to the Code of Federal Regulations

■ For the reasons set forth above, the Commission is amending title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 1. Part 241 is amended by adding Release No. 34–45194 and the release date of December 27, 2001 to the list of interpretative releases.

Dated: December 27, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–32199 Filed 12–31–01; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8975]

RIN 1545–BA21

Certain Transfers of Property to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that apply to certain transactions or events that result in a Regulated Investment Company [RIC] or a Real Estate Investment Trust [REIT] owning property that has a basis determined by reference to a C corporation's basis in the property. These regulations affect RICs, REITs, and C corporations and clarify the tax treatment of transfers of C corporation property to a RIC or REIT. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective January 2, 2002.

Applicability Dates: For dates of applicability, see §§ 1.337(d)–6T(e) and 1.337(d)–7T(f).

FOR FURTHER INFORMATION CONTACT: Lisa A. Fuller, (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1672. Responses to this collection of information are required to obtain a benefit, i.e., to elect to recognize gain as if the C corporation had sold the property at fair market value or to elect section 1374 treatment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. section 6103.

Background

Sections 631 and 633 of the Tax Reform Act of 1986 (the 1986 Act) (Public Law 99–514, 100 Stat. 2085, 2272), as amended by section 1006(e) and (g) of the Technical and Miscellaneous Revenue Act of 1988 (the 1988 Act) (Public Law 100–647, 102 Stat. 3342, 3400–01), amended the Internal Revenue Code (Code) to repeal the *General Utilities* doctrine. In particular, the 1986 Act amended sections 336 and 337 to require corporations to recognize gain or loss on the distribution of property in connection with complete liquidations other than certain subsidiary liquidations. Section 337(d) directs the Secretary to prescribe regulations as may be necessary to carry out the purposes of *General Utilities* repeal, including rules to ''ensure that such purposes may not be circumvented * * * through the use of a regulated investment company, a real estate investment trust, or tax-exempt entity * * *'' Absent special rules, the transfer of property owned by a C corporation to a RIC or REIT could result in permanently removing the property's built-in gain from tax at the corporate level, because RICs and REITs generally are not subject to tax on income that is distributed to their shareholders.

On February 4, 1988, the IRS issued Notice 88–19 (1988–1 C.B. 486) announcing its intention to promulgate regulations under the authority of section 337(d) with respect to transactions or events that result in a RIC or REIT owning property that has a basis determined by reference to a C corporation's basis (a carryover basis). Notice 88–19 provided that the regulations would apply with respect to the net built-in gain of C corporation assets that become assets of a RIC or REIT by the qualification of a C corporation as a RIC or REIT or by the transfer of assets of a C corporation to a RIC or REIT (a conversion transaction). The Notice further provided that, where the regulations apply, the C corporation would be treated, for all purposes, as if it had sold all of its assets at their respective fair market values and immediately liquidated. The Notice provided, however, that the regulations would not allow the recognition of a net loss and that, except as provided in the Notice, the regulations would not affect the characterization for tax purposes of, or the tax treatment of parties to, any transactions to which they apply. For example, shareholders of a C corporation who received RIC shares in a transaction that qualified as a reorganization under section 368(a)(1)(C) would not recognize gain or loss solely because the C corporation was subject to tax. The Notice also provided that immediate gain recognition could be avoided if the C corporation that qualified as a RIC or REIT or the transferee RIC or REIT, as the case may have been, elected to be subject to tax under section 1374 with respect to the C corporation property. Notice 88–19 also indicated that the regulations would apply retroactively to June 10, 1987. Notice 88–96 (1988–2 C.B. 420), amplifies Notice 88–19 by

providing that the regulations described in Notice 88–19 would provide an exception to the general gain recognition rules for any C corporation that qualified to be taxed as a RIC for at least one taxable year, then failed to so qualify for one taxable year, and then requalified to be taxed as a RIC in the next taxable year.

On February 7, 2000, Treasury and the IRS published temporary regulations [TD 8872] (the 2000 temporary regulations) reflecting the principles set forth in Notice 88–19 and Notice 88–96, a notice of proposed rulemaking by cross-reference to temporary regulations, and a notice of public hearing [REG–209135–88]. The 2000 temporary regulations apply retroactively to June 10, 1987.

Treasury and the IRS have received a number of comments, both written and oral, on the 2000 temporary regulations. A public hearing was held on May 10, 2000. After considering these comments, Treasury and the IRS have decided to issue two new sets of temporary regulations, one that will apply to conversion transactions occurring on or after June 10, 1987 and before January 2, 2002 (the –6T regulations), and another that will apply to conversion transactions occurring on or after January 2, 2002 (the –7T regulations). Alternatively, taxpayers generally may apply the 2000 temporary regulations in lieu of the –6T regulations to any conversion transaction that occurred on or after June 10, 1987 and before January 2, 2002. However, RICs and REITs that rely on the 2000 temporary regulations and that are subject to section 1374 treatment may not rely on certain provisions in the 2000 temporary regulations, but instead must apply certain provisions of the –6T regulations, with respect to built-in gains and losses recognized in taxable years beginning on or after January 2, 2002. Furthermore, taxpayers are not prevented from relying on the 2000 temporary regulations merely because they elect section 1374 treatment in the manner described in the –6T regulations rather than in the manner described in the 2000 temporary regulations.

Explanation of Provisions

This preamble first discusses the –6T regulations and how the –6T regulations differ from the 2000 temporary regulations. This preamble then explains the differences between the –7T regulations and the –6T regulations.

Summary of –6T Regulations

The –6T regulations provide that, if property of a C corporation that is not a RIC or REIT becomes the property of a RIC or REIT in a conversion transaction, then the C corporation is subject to deemed sale treatment, unless the RIC or REIT elects to be subject to section 1374 treatment. Thus, the C corporation generally recognizes gain and loss as if it sold the property converted to RIC or REIT property or transferred to the RIC or REIT (the converted property) to an unrelated party at fair market value immediately before the conversion transaction. If the C corporation recognizes net gain on the deemed sale, then the basis of the converted property in the hands of the RIC or REIT is adjusted to its fair market value immediately before the conversion transaction. The –6T regulations do not permit a C corporation to recognize a net loss on the deemed sale. For this purpose, *net loss* is defined as the excess of aggregate losses over aggregate gains (including items of income), without regard to character. Where there is a net loss, the C corporation recognizes no gain or loss on the deemed sale, and the C corporation's basis in the converted property carries over to the RIC or REIT.

Clarification of Deemed Sale Treatment

The 2000 temporary regulations provide that, unless a section 1374 election is made, a C corporation that elects RIC or REIT status or transfers property to a RIC or REIT is ''treated for all purposes, including recognition of net built-in gain, as if it had sold all of its assets at their respective fair market values on the deemed liquidation date * * * and immediately liquidated.'' Commentators objected to this provision on two grounds. First, they argued that the provision is overly broad, because it treats the C corporation that is transferring property to a RIC or REIT as having sold all of its property, even where all of its property may not have been transferred to the RIC or REIT. Second, they argued that the ''for all purposes'' language could be read to suggest that the deemed liquidation results in the imposition of a shareholder tax, a result that they view as inconsistent with Notice 88–19 and the purposes of section 337(d). Commentators also argued that deemed liquidation treatment would inappropriately eliminate the C corporation's tax attributes, such as net operating loss carryforwards and earnings and profits, to which the RIC or REIT might otherwise succeed.

Treasury and the IRS agree with these comments. Accordingly, the –6T regulations clarify that the C corporation is treated as having sold only that property actually transferred to the RIC or REIT and that a shareholder-level tax is not imposed. In addition, the deemed liquidation construct has been eliminated.

Deemed Sale Loss Disallowance

The 2000 temporary regulations do not permit a C corporation to recognize a net loss on a conversion transaction. Some commentators argued that loss disallowance is inappropriate, noting that a net loss can be recognized under section 336 and § 1.337(d)–4, which governs certain transfers of property from taxable to tax-exempt entities.

Treasury and the IRS believe that loss disallowance is appropriate in the context of the –6T regulations for two reasons. First, Treasury and the IRS are concerned that a C corporation may selectively contribute loss property to a RIC or REIT in a section 351 transaction, generating an immediate loss. Because section 336 and § 1.337(d)–4 apply only where a C corporation transfers substantially all of its assets, selective contribution concerns are minimal in those contexts. Second, section 336 and § 1.337(d)–4 require C corporations to recognize both gains and losses immediately, whereas the –6T regulations allow taxpayers to defer the recognition of net gain on a conversion transaction by making an election to be subject to tax under section 1374. Allowing immediate net loss recognition while allowing deferral of net gain would provide C corporations engaging in conversion transactions with an inappropriate degree of selectivity. Taxpayers that otherwise would recognize a net gain on a conversion transaction would likely elect section 1374 treatment. Taxpayers that would recognize a net loss on a conversion transaction would likely choose deemed sale treatment. For these reasons, the –6T regulations disallow recognition of a net loss on a conversion transaction.

Section 1374 Double Tax Issue

Some commentators argued that conversion transactions do not implicate concerns regarding avoidance of *General Utilities* repeal to the extent that the RIC or REIT has C corporations as shareholders after the conversion transaction. The commentators explained that, if a C corporation continues to own stock in the RIC or REIT after a conversion transaction, then the built-in gain attributable to the transferred property is preserved in the basis of the C corporation's RIC or REIT stock. Further, the C corporation generally will be fully taxable on dividends distributed by the RIC or REIT, even where the RIC or REIT pays

tax on built-in gains. Accordingly, the commentators requested that the 2000 temporary regulations be modified to mitigate the combined impact of tax at the RIC or REIT level under section 1374 and tax at the C corporation shareholder level on RIC and REIT dividends.

Treasury and the IRS considered several approaches suggested by commentators for mitigating this double corporate tax. These approaches include: (1) Exempting section 351 transfers of property by a C corporation to a RIC or REIT from the scope of these regulations, (2) removing the requirement that RICs and REITs distribute recognized built-in gains, and (3) allowing C corporation shareholders of RICs and REITs to claim a dividends received deduction for built-in gains distributed by the RIC or REIT.

After consideration, Treasury and the IRS decided that it could not accept any of these approaches. The first two approaches were not accepted because they could create opportunities to avoid corporate-level tax on built-in gains. The third approach was not accepted because the dividends received deduction is only available for distributions characterized as ordinary income, not distributions characterized as capital gains. As explained below, under the –6T regulations, RICs and REITs may characterize most distributions of built-in gains as capital gain dividends. Moreover, all three approaches would give rise to administrative difficulties that could be addressed only through extensive rulemaking.

Section 1374 Operational Rules

The 2000 temporary regulations provide that the built-in gain of a RIC or REIT electing section 1374 treatment and the corporate-level tax imposed on that gain are subject to rules similar to the rules relating to net income from foreclosure property (NIFP) of REITs. The comments pointed out certain differences between the section 1374 rules and the NIFP rules. For example, under section 1374, any recognized built-in gain retains its character as capital gain or ordinary income. In contrast, NIFP is always treated as ordinary income. In addition, net operating losses of a C corporation can offset recognized built-in gains of an S corporation but cannot offset NIFP. Similarly, business credit carryforwards from a C corporation can reduce the tax on the net recognized built-in gain of an S corporation but cannot reduce the tax on NIFP.

In light of these differences, Treasury and the IRS have adopted an alternative approach that does not rely on the NIFP rules for coordinating the built-in gains tax imposed by this section with the provisions of subchapter M. Unlike the NIFP rules, this approach generally preserves the character of recognized built-in gains and recognized built-in losses. Under this approach, recognized built-in gains and recognized built-in losses that have been taxed in accordance with these regulations are treated like other gains and losses of RICs and REITs that are not subject to tax under these regulations. Thus, they are included in computing investment company taxable income for purposes of section 852(b)(2), real estate investment trust taxable income for purposes of section 857(b)(2), net capital gain for purposes of sections 852(b)(3) and 857(b)(3), gross income derived from sources within any foreign country or possession of the United States for purposes of section 853, and the dividends paid deduction for purposes of sections 852(b)(2)(D), 852(b)(3)(A), 857(b)(2)(B), and 857(b)(3)(A).

In addition, consistent with section 1374, the –6T regulations generally allow RICs and REITs to use loss carryforwards and credits and credit carryforwards arising in taxable years for which the corporation that generated the attribute was a C corporation (and not a RIC or REIT) to reduce net recognized built-in gain and the tax thereon, subject to the limitations imposed by sections 1374(b)(2) and (b)(3) and §§ 1.1374–5 and 1.1374–6. In addition, the –6T regulations provide an ordering rule for applying loss carryforwards, credits, and credit carryforwards to reduce net recognized built-in gain (and the tax thereon) and RIC or REIT taxable income (and the tax thereon). Under this ordering rule, loss carryforwards of a RIC or REIT must be used to reduce net recognized built-in gain for a taxable year to the greatest extent possible before such losses can be used to reduce investment company taxable income for purposes of section 852(b) or real estate investment trust taxable income for purposes of section 857(b) for that taxable year. Similarly, credits and credit carryforwards of a RIC or REIT must be used to reduce the tax on net recognized built-in gain imposed under this section for the taxable year to the greatest extent possible before such credits and credit carryforwards can be used to reduce the tax, if any, on investment company taxable income for purposes of section 852(b) or on real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

The –6T regulations also make adjustments to the taxable income limitation of section 1374 to take into account items that are unique to REITs. Under the –6T regulations, taxable income of a RIC or REIT is initially computed under sections 1374(d)(2) and 1375(b)(1)(B) as if the RIC or REIT were an S corporation. Thus, the RIC's or REIT's taxable income is its taxable income under section 63(a) without regard to—(i) deductions allowed by part VIII of subchapter B (other than the deduction allowed by section 248, relating to organizational expenditures), and (ii) the deduction under section 172. In addition, the RIC or REIT would not be allowed a deduction for dividends paid, as the dividends paid deduction is not available to S corporations. Under the –6T regulations, this amount is then reduced for REITs by certain items that are subject to a 100-percent penalty tax. Items subject to a 100-percent penalty tax, along with net income from foreclosure property, are also excluded in computing a REIT's net recognized built-in gain.

In response to comments, the –6T regulations also provide that the entity-level tax imposed on net recognized built-in gain is treated as a loss that reduces the RIC's or REIT's taxable income and earnings and profits. The character of the loss attributable to the tax on net recognized built-in gain is determined by allocating the tax proportionately (based on recognized built-in gain) among the items of recognized built-in gain included in net recognized built-in gain. With respect to RICs, the tax imposed on net recognized built-in gain is treated as attributable to the portion of the RIC's taxable year occurring after October 31.

Commentators also requested that built-in gain recognized by a RIC or REIT that is subject to section 1374 treatment generate subchapter M earnings and profits. They explained that a RIC or REIT cannot qualify as such under subchapter M if it retains any subchapter C earnings and profits. Thus, if earnings and profits attributable to recognized built-in gain were subchapter C earnings and profits, a RIC or REIT would retain its qualification only if it distributed 100 percent of the net recognized built-in gain in excess of the entity-level tax. In response to these comments, the examples in the –6T regulations clarify that earnings and profits attributable to built-in gain recognized by a RIC or REIT are subchapter M earnings and profits.

Electing Section 1374 Treatment

The 2000 temporary regulations provide that a RIC or REIT makes a section 1374 election by attaching a statement to its Federal income tax

return for the first taxable year in which the assets of a C corporation become assets of the RIC or REIT. The 2000 temporary regulations also provide a special rule for making a section 1374 election where the first taxable year in which the assets of a C corporation became the assets of a RIC or REIT ends after June 10, 1987, but before March 8, 2000 (an interim period election). Under the 2000 temporary regulations, a RIC or REIT may file an interim period election with its first Federal income tax return filed after March 8, 2000.

Commentators expressed concern that the rule applicable to interim period elections required a RIC or REIT to make an election on its first Federal income tax return filed after March 8, 2000, even if the RIC or REIT previously had made a section 1374 election. They also expressed concern that RICs and REITs were not given sufficient time after the promulgation of the 2000 temporary regulations to make interim period elections. In response to these comments, the –6T regulations allow a RIC or REIT that converted from a C corporation or acquired property with a carryover basis from a C corporation before January 2, 2002, to make a section 1374 election with any Federal income tax return filed by the RIC or REIT on or before March 15, 2003, provided that the RIC or REIT has reported consistently with such election for all periods. In addition, under the –6T regulations, an interim period election is not necessary if the RIC or REIT can demonstrate that it has previously informed the IRS of its intent to make a section 1374 election.

Some commentators also requested that Treasury and the IRS clarify that a RIC or REIT must make a separate section 1374 election for each conversion transaction in which it participates. The –6T regulations make this clarification. Thus, a RIC or REIT can elect section 1374 treatment for one conversion transaction and not elect section 1374 treatment for another conversion transaction.

Exception for Re-Election of RIC or REIT Status

Under the 2000 temporary regulations, the rule requiring recognition of gain on a conversion transaction does not apply to a C corporation that qualified to be a RIC for at least one taxable year, then failed to so qualify for a period not in excess of one taxable year, and then requalifies as a RIC. Although this exception implements Notice 88–96, the language of the 2000 temporary regulations differs slightly from the language used in Notice 88–96. Some commentators have noted that the change in language might be misinterpreted as a substantive change where none was intended. In response to these comments, this language has been clarified in the –6T regulations.

In addition, some commentators requested that the exception be expanded to cover periods longer than one taxable year. They argued that a corporation that fails to meet the RIC qualification requirements for as short a period as 6 months could be taxed as a C corporation for two taxable years. This could happen where a RIC fails the quarterly diversification test for the last quarter of one calendar year and the first quarter of the subsequent calendar year.

Other commentators requested that this exception be expanded to cover REITs. They noted that Congress generally treats RICs and REITs similarly and that there is no justification for excluding REITs from the benefit of this exception.

The –6T regulations incorporate these comments by extending the exception to REITs and the maximum period for loss of RIC or REIT status from one taxable year to two taxable years.

Retention of Retroactive Effective Date

Commentators argued that, due to the 12-year gap between the promulgation of Notice 88–19 and the issuance of the regulations implementing Notice 88–19, the regulations should not apply retroactively.

Notice 88–19 notified taxpayers that the section 337(d) regulations would apply as of June 10, 1987. The 2000 temporary regulations, which were published on February 7, 2000, do, in fact, apply as of June 10, 1987. Moreover, since February 7, 2000, taxpayers have relied on the 2000 temporary regulations. For these reasons, the 2000 temporary regulations and the –6T regulations retain the June 10, 1987, applicability date.

Summary of –7T Regulations

The –7T regulations follow the –6T regulations in most respects. However, certain changes were included in the –7T regulations that were not included in the –6T regulations, because Treasury and the IRS were concerned that these changes, if made retroactively, could have an adverse impact on taxpayers that have relied on the 2000 temporary regulations. The following sections highlight these differences between the –6T regulations and the –7T regulations.

Section 1374 Treatment as Default Rule

A number of commentators, particularly REIT commentators, expressed the view that, when a C corporation engages in a conversion transaction, section 1374 treatment should apply automatically and taxpayers that desire deemed sale treatment should be allowed to elect such treatment. They pointed out that the automatic application of a section 1374 regime is consistent with the treatment of C corporations that elect S status. Further, they argued that most taxpayers would prefer to be subject to section 1374 treatment than to deemed sale treatment. If section 1374 treatment is the default treatment, then the incidence of inadvertent failures to make elections will be reduced. However, to protect the expectations of taxpayers that engaged in conversion transactions prior to the promulgation of these regulations, the commentators recommended that section 1374 treatment be adopted as the default treatment on a prospective basis. In accordance with these comments, the –7T regulations provide that section 1374 treatment applies unless the C corporation elects deemed sale treatment.

Anti-Stuffing Rule for Taxpayers Electing Deemed Sale Treatment

Treasury and the IRS are concerned that taxpayers electing deemed sale treatment might attempt to decrease net gains on conversion transactions by stuffing loss property into a C corporation prior to a conversion transaction. Treasury and the IRS note that section 336 and § 1.337(d)–4 both have anti-stuffing rules. Accordingly, the –7T regulations include an anti-stuffing rule applicable to transactions taxed under the deemed sale approach. The anti-stuffing rule is similar to those contained in section 336 and § 1.337(d)–4.

Aggregate Principles To Apply to Partnership Transactions

Treasury and the IRS believe that a partnership with C corporation partners should be treated as an aggregate for purposes of applying these regulations. Accordingly, the –7T regulations provide that these regulations apply to property transferred by a partnership to a RIC or REIT to the extent of any C corporation partner's proportionate share of the transferred property. For example, if a C corporation owns a 20 percent interest in a partnership and that partnership contributes an asset to a REIT in a section 351 transaction, then the partnership shall be treated as a C corporation with respect to 20 percent of the asset contributed to the REIT. If the partnership were to elect deemed sale treatment with respect to such

transfer, then any gain recognized by the partnership on the deemed sale must be specially allocated to the C corporation partner.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Lisa A. Fuller of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.337(d)–6T also issued under 26 U.S.C. 337.

Section 1.337(d)–7T also issued under 26 U.S.C. 337. * * *

■ **Par. 2.** § 1.337(d)–5T is amended by:

■ 1. Revising the section heading.

■ 2. Revising paragraph (d).

■ The revisions read as follows:

§ 1.337(d)–5T Old transitional rules imposing tax on property owned by a C corporation that becomes property of a RIC or REIT (temporary).

* * * * *

(d) *Effective date.* In the case of carryover basis transactions involving the transfer of property of a C corporation to a RIC or REIT, the regulations apply to transactions occurring on or after June 10, 1987, and before January 2, 2002. In the case of a C corporation that qualifies to be taxed as a RIC or REIT, the regulations apply to such qualifications that are effective for taxable years beginning on or after June 10, 1987, and before January 2, 2002. However, RICs and REITs that are subject to section 1374 treatment under this section may not rely on § 1.337(d)–5T(b)(1), but must apply paragraphs (c)(1)(i), (c)(2)(i), (c)(2)(ii), and (c)(3) of § 1.337(d)–6T, with respect to built-in gains and losses recognized in taxable years beginning on or after January 2, 2002. In lieu of applying this section, taxpayers may rely on § 1.337(d)–6T to determine the tax consequences (for all taxable years) of any conversion transaction. For transactions and qualifications that occur on or after January 2, 2002, see § 1.337(d)–7T.

■ **Par. 3.** Sections 1.337(d)–6T and 1.337(d)–7T are added immediately after § 1.337(d)–5T to read as follows:

§ 1.337(d)–6T New transitional rules imposing tax on property owned by a C corporation that becomes property of a RIC or REIT (temporary).

(a) *General Rule*—(1) *Property owned by a C corporation that becomes property of a RIC or REIT.* If property owned by a C corporation (as defined in paragraph (a)(2)(i) of this section) becomes the property of a RIC or REIT (the converted property) in a conversion transaction (as defined in paragraph (a)(2)(ii) of this section), then deemed sale treatment will apply as described in paragraph (b) of this section, unless the RIC or REIT elects section 1374 treatment with respect to the conversion transaction as provided in paragraph (c) of this section. See paragraph (d) of this section for exceptions to this paragraph (a).

(2) *Definitions*—(i) *C corporation.* For purposes of this section, the term C corporation has the meaning provided in section 1361(a)(2) except that the term does not include a RIC or REIT.

(ii) *Conversion transaction.* For purposes of this section, the term conversion transaction means the qualification of a C corporation as a RIC or REIT or the transfer of property owned by a C corporation to a RIC or REIT.

(b) *Deemed Sale Treatment*—(1) *In general.* If property owned by a C corporation becomes the property of a RIC or REIT in a conversion transaction, then the C corporation recognizes gain and loss as if it sold the converted property to an unrelated party at fair market value on the deemed sale date (as defined in paragraph (b)(3) of this section). This paragraph (b) does not apply if its application would result in the recognition of a net loss. For this purpose, *net loss* is the excess of aggregate losses over aggregate gains (including items of income), without regard to character.

(2) *Basis adjustment.* If a corporation recognizes a net gain under paragraph (b)(1) of this section, then the converted property has a basis in the hands of the RIC or REIT equal to the fair market value of such property on the deemed sale date.

(3) *Deemed sale date*—(i) *RIC or REIT qualifications.* If the conversion transaction is a qualification of a C corporation as a RIC or REIT, then the deemed sale date is the end of the last day of the C corporation's last taxable year before the first taxable year in which it qualifies to be taxed as a RIC or REIT.

(ii) *Other conversion transactions.* If the conversion transaction is a transfer of property owned by a C corporation to a RIC or REIT, then the deemed sale date is the end of the day before the day of the transfer.

(4) *Example.* The rules of this paragraph (b) are illustrated by the following example:

Example. Deemed sale treatment on merger into RIC. (i) X, a calendar-year taxpayer, has qualified as a RIC since January 1, 1991. On May 31, 1994, Y, a C corporation and calendar-year taxpayer, transfers all of its property to X in a transaction that qualifies as a reorganization under section 368(a)(1)(C). X does not elect section 1374 treatment under paragraph (c) of this section and chooses not to rely on § 1.337(d)–5T. As a result of the transfer, Y is subject to deemed sale treatment under this paragraph (b) on its tax return for the short taxable year ending May 31, 1994. On May 31, 1994, Y's only assets are Capital Asset, which has a fair market value of $100,000 and a basis of $40,000 as of the end of May 30, 1994, and $50,000 cash. Y also has an unrestricted net operating loss carryforward of $12,000 and accumulated earnings and profits of $50,000. Y has no taxable income for the short taxable year ending May 31, 1994, other than gain recognized under this paragraph (b). In 1997, X sells Capital Asset for $110,000. Assume the applicable corporate tax rate is 35%.

(ii) Under this paragraph (b), Y is treated as if it sold the converted property (Capital Asset and $50,000 cash) at fair market value on May 30, 1994, recognizing $60,000 of gain ($150,000 amount realized—$90,000 basis). Y

must report the gain on its tax return for the short taxable year ending May 31, 1994. Y may offset this gain with its $12,000 net operating loss carryforward and will pay tax of $16,800 (35% of $48,000).

(iii) Under section 381, X succeeds to Y's accumulated earnings and profits. Y's accumulated earnings and profits of $50,000 increase by $60,000 and decrease by $16,800 as a result of the deemed sale. Thus, the aggregate amount of subchapter C earnings and profits that must be distributed to satisfy section 852(a)(2)(B) is $93,200 ($50,000 + $60,000 − $16,800). X's basis in Capital Asset is $100,000. On X's sale of Capital Asset in 1997, X recognizes $10,000 of gain, which is taken into account in computing X's net capital gain for purposes of section 852(b)(3).

(c) *Election of section 1374 treatment*—(1) *In general*—(i) *Property owned by a C corporation that becomes property of a RIC or REIT.* Paragraph (b) of this section does not apply if the RIC or REIT that was formerly a C corporation or that acquired property from a C corporation makes the election described in paragraph (c)(4) of this section. A RIC or REIT that makes such an election will be subject to tax on the net built-in gain in the converted property under the rules of section 1374 and the regulations thereunder, as modified by this paragraph (c), as if the RIC or REIT were an S corporation.

(ii) *Property subject to the rules of section 1374 owned by a RIC, REIT, or S corporation that becomes property of a RIC or REIT.* If property subject to the rules of section 1374 owned by a RIC, a REIT, or an S corporation (the predecessor) becomes the property of a RIC or REIT (the successor) in a continuation transaction, the rules of section 1374 apply to the successor to the same extent that the predecessor was subject to the rules of section 1374 with respect to such property, and the 10-year recognition period of the successor with respect to such property is reduced by the portion of the 10-year recognition period of the predecessor that expired before the date of the continuation transaction. For this purpose, a continuation transaction means the qualification of the predecessor as a RIC or REIT or the transfer of property from the predecessor to the successor in a transaction in which the successor's basis in the transferred property is determined, in whole or in part, by reference to the predecessor's basis in that property.

(2) *Modification of section 1374 treatment*—(i) *Net recognized built-in gain for REITs*—(A) *Prelimitation amount.* The prelimitation amount determined as provided in § 1.1374–2(a)(1) is reduced by the portion of such amount, if any, that is subject to tax under section 857(b)(4), (5), (6), or (7). For this purpose, the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is computed as follows:

(*1*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(A), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(2) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(2).

(*2*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(B), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(3) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(3).

(B) *Taxable income limitation.* The taxable income limitation determined as provided in § 1.1374–2(a)(2) is reduced by an amount equal to the tax imposed under sections 857(b)(5), (6), and (7).

(ii) *Loss carryforwards, credits and credit carryforwards*—(A) *Loss carryforwards.* Consistent with paragraph (c)(1)(i) of this section, net operating loss carryforwards and capital loss carryforwards arising in taxable years for which the corporation that generated the loss was not subject to subchapter M of chapter 1 of the Code are allowed as a deduction against net recognized built-in gain to the extent allowed under section 1374 and the regulations thereunder. Such loss carryforwards must be used as a deduction against net recognized built-in gain for a taxable year to the greatest extent possible before such losses can be used to reduce investment company taxable income for purposes of section 852(b) or real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(B) *Credits and credit carryforwards.* Consistent with paragraph (c)(1)(i) of this section, minimum tax credits and business credit carryforwards arising in taxable years for which the corporation that generated the credit was not subject to subchapter M of chapter 1 of the Internal Revenue Code are allowed to reduce the tax imposed on net recognized built-in gain under this paragraph (c) to the extent allowed under section 1374 and the regulations thereunder. Such credits and credit carryforwards must be used to reduce the tax imposed under this paragraph (c) on net recognized built-in gain for a taxable year to the greatest extent possible before such credits and credit carryforwards can be used to reduce the tax, if any, on investment company taxable income for purposes of section 852(b) or on real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(iii) *10-year recognition period.* In the case of a conversion transaction that is a qualification of a C corporation as a RIC or REIT, the 10-year recognition period described in section 1374(d)(7) begins on the first day of the RIC's or REIT's first taxable year. In the case of other conversion transactions, the 10-year recognition period begins on the day the property is acquired by the RIC or REIT.

(3) *Coordination with subchapter M rules*—(i) *Recognized built-in gains and losses subject to subchapter M.* Recognized built-in gains and losses of a RIC or REIT are included in computing investment company taxable income for purposes of section 852(b)(2), real estate investment trust taxable income for purposes of section 857(b)(2), capital gains for purposes of sections 852(b)(3) and 857(b)(3), gross income derived from sources within any foreign country or possession of the United States for purposes of section 853, and the dividends paid deduction for purposes of sections 852(b)(2)(D), 852(b)(3)(A), 857(b)(2)(B), and 857(b)(3)(A).

(ii) *Treatment of tax imposed.* The amount of tax imposed under this paragraph (c) on net recognized built-in gain for a taxable year is treated as a loss sustained by the RIC or the REIT during such taxable year. The character of the loss is determined by allocating the tax proportionately (based on recognized built-in gain) among the items of recognized built-in gain included in net recognized built-in gain. With respect to RICs, the tax imposed under this paragraph (c) on net recognized built-in gain is treated as attributable to the portion of the RIC's taxable year occurring after October 31.

(4) *Making the section 1374 election*—(i) *In general.* A RIC or REIT makes a section 1374 election with the following statement: ''[Insert name and employer identification number of electing RIC or REIT] elects under § 1.337–6T(c) to be subject to the rules of section 1374 and the regulations thereunder with respect to its property that formerly was held by a C corporation, [insert name and employer identification number of the C corporation, if different from name and employer identification number of the RIC or REIT].'' However, a RIC or REIT need not file an election under this paragraph (c), but will be deemed to have made such an election if it can demonstrate that it informed the IRS prior to January 2, 2002, of its intent to make a section 1374 election. An election under this paragraph (c) is irrevocable.

(ii) *Time for making the election.* An election under this paragraph (c) may be filed by the RIC or REIT with any Federal income tax return filed by the RIC or REIT on or before March 15, 2003, provided that the RIC or REIT has reported consistently with such election for all periods.

(5) *Example.* The rules of this paragraph (c) are illustrated by the following example:

Example. Section 1374 treatment on REIT election. (i) X, a C corporation that is a calendar-year taxpayer, elects to be taxed as a REIT on its 1994 tax return, which it files on March 15, 1995. As a result, X is a REIT for its 1994 taxable year and would be subject to deemed sale treatment under paragraph (b) of this section but for X's timely election of section 1374 treatment under this paragraph (c). X chooses not to rely on § 1.337(d)–5T. As of the beginning of the 1994 taxable year, X's property consisted of Real Property, which is not section 1221(a)(1) property and

which had a fair market value of $100,000 and an adjusted basis of $80,000, and $25,000 cash. X also had accumulated earnings and profits of $25,000, unrestricted net operating loss carryforwards of $3,000, and unrestricted business credit carryforwards of $2,000. On July 1, 1997, X sells Real Property for $110,000. For its 1997 taxable year, X has net income other than recognized built-in gain. Assume the highest corporate tax rate is 35%.

(ii) Upon its election to be taxed as a REIT, X retains its $80,000 basis in Real Property and its $25,000 accumulated earnings and profits. X retains its $3,000 of net operating loss carryforwards and its $2,000 of business credit carryforwards. To satisfy section 857(a)(2)(B), X must distribute $25,000, an amount equal to its earnings and profits accumulated in non-REIT years, to its shareholders by the end of its 1994 taxable year.

(iii) Upon X's sale of Real Property in 1997, X recognizes gain of $30,000 ($110,000–$80,000). X's recognized built-in gain for purposes of applying section 1374 is $20,000 ($100,000 fair market value as of the beginning of X's first taxable year as a REIT—$80,000 basis). Because X has net income other than recognized built-in gain for its 1997 taxable year, the taxable income limitation does not apply. X, therefore, has $20,000 net recognized built-in gain for the year. Assuming that X has not used its $3,000 of net operating loss carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(2) and § 1.1374–5, X is allowed a $3,000 deduction against the $20,000 net recognized built-in gain. X would owe tax of $5,950 (35% of $17,000) on its net recognized built-in gain, except that X may use its $2,000 of business credit carryforwards to reduce this tax, assuming that X has not used the credit carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(3) and § 1.1374–6. Thus, X owes tax of $3,950 under this paragraph (c). For purposes of subchapter M, X's earnings and profits for the year increase by $26,050 ($30,000 capital gain on the sale of Real Property—$3,950 tax under this paragraph (c)).

(iv) To compute X's net capital gain for purposes of section 857(b)(3) for the taxable year, the $20,000 of net recognized built-in gain less the $3,950 of tax imposed on that gain is added to X's capital gain (or loss), if any, that is not recognized built-in gain (or loss).

(d) *Exceptions*—(1) *Gain otherwise recognized.* Paragraph (a) of this section does not apply to any conversion transaction to the extent that gain or loss otherwise is recognized on such conversion transaction. See, for example, sections 336, 351(b), 356, 357(c), 367, and 1001.

(2) *Re-election of RIC or REIT status*—(i) *Generally.* Except as provided in paragraphs (d)(2)(ii) and (iii) of this section, paragraph (a)(1) of this section does not apply to any corporation that—

(A) Immediately prior to qualifying to be taxed as a RIC or REIT was subject to tax as a C corporation for a period not exceeding two taxable years; and

(B) Immediately prior to being subject to tax as a C corporation was subject to tax as a RIC or REIT for a period of at least one taxable year.

(ii) *Property acquired from another corporation while a C corporation.* The exception described in paragraph (d)(2)(i) of this section does not apply to property acquired by the corporation while it was subject to tax as a C corporation from another corporation (whether or not a C corporation) in a transaction that results in the acquirer's basis in the property being determined by reference to a C corporation's basis in the property.

(iii) *RICs and REITs previously subject to section 1374 treatment.* If the RIC or REIT had property subject to paragraph (c) of this section before the RIC or REIT became subject to tax as a C corporation as described in paragraph (d)(2)(i) of this section, then paragraph (c) of this section applies to the RIC or REIT upon its requalification as a RIC or REIT, except that the 10-year recognition period with respect to such property is reduced by the portion of the 10-year recognition period that expired before the RIC or REIT became subject to tax as a C corporation and by the period of time that the corporation was subject to tax as a C corporation.

(e) *Effective date.* This section applies to conversion transactions that occur on or after June 10, 1987, and before January 2, 2002. In lieu of applying this section, taxpayers generally may apply § 1.337(d)–5T to determine the tax consequences (for all taxable years) of any conversion transaction that occurs on or after June 10, 1987 and before January 2, 2002, except that RICs and REITs that are subject to section 1374 treatment with respect to a conversion transaction may not rely on § 1.337(d)–5T(b)(1), but must apply paragraphs (c)(1)(i), (c)(2)(i), (c)(2)(ii), and (c)(3) of this section, with respect to built-in gains and losses recognized in taxable years beginning on or after January 2, 2002. Taxpayers are not prevented from relying on § 1.337(d)–5T merely because they elect section 1374 treatment in the manner described in paragraph (c)(4) of this section instead of in the manner described in § 1.337(d)–5T(b)(3) and (c). For conversion transactions that occur on or after January 2, 2002, see § 1.337(d)–7T. This section expires on December 31, 2004.

§ 1.337(d)–7T Tax on property owned by a C corporation that becomes property of a RIC or REIT (temporary).

(a) *General Rule*—(1) *Property owned by a C corporation that becomes property of a RIC or REIT.* If property owned by a C corporation (as defined in paragraph (a)(2)(i) of this section) becomes the property of a RIC or REIT (the converted property) in a conversion transaction (as defined in paragraph (a)(2)(ii) of this section), then section 1374 treatment will apply as described in paragraph (b) of this section, unless the C corporation elects deemed sale treatment with respect to the conversion transaction as provided in paragraph (c) of this section. See paragraph (d) of this section for exceptions to this paragraph (a).

(2) *Definitions*—(i) *C corporation.* For purposes of this section, the term C corporation has the meaning provided in section 1361(a)(2) except that the term does not include a RIC or REIT.

(ii) *Conversion transaction.* For purposes of this section, the term conversion transaction means the qualification of a C corporation as a RIC or REIT or the transfer of property owned by a C corporation to a RIC or REIT.

(b) *Section 1374 treatment*—(1) *In general*—(i) *Property owned by a C corporation that becomes property of a RIC or REIT.* If property owned by a C corporation becomes the property of a RIC or REIT in a conversion transaction, then the RIC or REIT will be subject to tax on the net built-in gain in the converted property under the rules of section 1374 and the regulations thereunder, as modified by this paragraph (b), as if the RIC or REIT were an S corporation.

(ii) *Property subject to the rules of section 1374 owned by a RIC, REIT, or S corporation that becomes property of a RIC or REIT.* If property subject to the rules of section 1374 owned by a RIC, a REIT, or an S corporation (the predecessor) becomes the property of a RIC or REIT (the successor) in a continuation transaction, the rules of section 1374 apply to the successor to the same extent that the predecessor was subject to the rules of section 1374 with respect to such property, and the 10-year recognition period of the successor with respect to such property is reduced by the portion of the 10-year recognition period of the predecessor that expired before the date of the continuation transaction. For this purpose, a continuation transaction means the qualification of the predecessor as a RIC or REIT or the transfer of property from the predecessor to the successor in a transaction in which the successor's basis in the transferred property is determined, in whole or in part, by reference to the predecessor's basis in that property.

(2) *Modification of section 1374 treatment*—(i) *Net recognized built-in gain for REITs*—(A) *Prelimitation amount.* The prelimitation amount determined as provided in § 1.1374–2(a)(1) is reduced by the portion of such amount, if any, that is subject to tax under section 857(b)(4), (5), (6), or (7). For this purpose, the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is computed as follows:

(*1*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(A), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(2) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(2).

(*2*) Where the tax under section 857(b)(5) is computed by reference to section 857(b)(5)(B), the amount of a REIT's recognized built-in gain that is subject to tax under section 857(b)(5) is the tax imposed by section 857(b)(5) multiplied by a fraction the numerator of which is the amount of recognized built-in gain (without regard to recognized built-in loss and recognized built-in gain from prohibited transactions) that is not derived from sources referred to in section 856(c)(3) and the denominator of which is the gross income (without regard to gross income from prohibited transactions) of the REIT that is not derived from sources referred to in section 856(c)(3).

(B) *Taxable income limitation.* The taxable income limitation determined as provided in § 1.1374–2(a)(2) is reduced by an amount equal to the tax imposed under section 857(b)(5), (6), and (7).

(ii) *Loss carryforwards, credits and credit carryforwards*—(A) *Loss carryforwards.* Consistent with paragraph (b)(1)(i) of this section, net operating loss carryforwards and capital loss carryforwards arising in taxable years for which the corporation that generated the loss was not subject to subchapter M of chapter 1 of the Code are allowed as a deduction against net recognized built-in gain to the extent allowed under section 1374 and the regulations thereunder. Such loss carryforwards must be used as a deduction against net recognized built-in gain for a taxable year to the greatest extent possible before such losses can be used to reduce investment company taxable income for purposes of section 852(b) or real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(B) *Credits and credit carryforwards.* Consistent with paragraph (b)(1)(i) of this section, minimum tax credits and business credit carryforwards arising in taxable years for which the corporation that generated the credit was not subject to subchapter M of chapter 1 of the Internal Revenue Code are allowed to reduce the tax imposed on net recognized built-in gain under this paragraph (b) to the extent allowed under section 1374 and the regulations thereunder. Such credits and credit carryforwards must be used to reduce the tax imposed under this paragraph (b) on net recognized built-in gain for a taxable year to the greatest extent possible before such credits and credit carryforwards can be used to reduce the tax, if any, on investment company taxable income for purposes of section 852(b) or on real estate investment trust taxable income for purposes of section 857(b) for that taxable year.

(iii) *10-year recognition period.* In the case of a conversion transaction that is a qualification of a C corporation as a RIC or REIT, the 10-year recognition period described in section 1374(d)(7) begins on the first day of the RIC's or REIT's first taxable year. In the case of other conversion transactions, the 10-year recognition period begins on the day the property is acquired by the RIC or REIT.

(3) *Coordination with subchapter M rules*—(i) *Recognized built-in gains and losses subject to subchapter M.* Recognized built-in gains and losses of a RIC or REIT are included in computing investment company taxable income for purposes of section 852(b)(2), real estate investment trust taxable income for purposes of section 857(b)(2), capital gains for purposes of sections 852(b)(3) and 857(b)(3), gross income derived from sources within any foreign country or possession of the United States for purposes of section 853, and the dividends paid deduction for purposes of sections 852(b)(2)(D), 852(b)(3)(A), 857(b)(2)(B), and 857(b)(3)(A).

(ii) *Treatment of tax imposed.* The amount of tax imposed under this paragraph (b) on net recognized built-in gain for a taxable year is treated as a loss sustained by the RIC or the REIT during such taxable year. The character of the loss is determined by allocating the tax proportionately (based on recognized built-in gain) among the items of recognized built-in gain included in net recognized built-in gain. With respect to RICs, the tax imposed under this paragraph (b) on net recognized built-in gain is treated as attributable to the portion of the RIC's taxable year occurring after October 31.

(4) *Example.* The rules of this paragraph (b) are illustrated by the following example:

Example. Section 1374 treatment on REIT election. (i) X, a C corporation that is a calendar-year taxpayer, elects to be taxed as a REIT on its 2004 tax return, which it files on March 15, 2005. As a result, X is a REIT for its 2004 taxable year and is subject to section 1374 treatment under this paragraph (b). X does not elect deemed sale treatment under paragraph (c) of this section. As of the beginning of the 2004 taxable year, X's property consisted of Real Property, which is not section 1221(a)(1) property and which had a fair market value of $100,000 and an adjusted basis of $80,000, and $25,000 cash. X also had accumulated earnings and profits of $25,000, unrestricted net operating loss carryforwards of $3,000, and unrestricted business credit carryforwards of $2,000. On July 1, 2007, X sells Real Property for $110,000. For its 1997 taxable year, X has net income other than recognized built-in gain. Assume the highest corporate tax rate is 35%.

(ii) Upon its election to be taxed as a REIT, X retains its $80,000 basis in Real Property and its $25,000 accumulated earnings and profits. X retains its $3,000 of net operating loss carryforwards and its $2,000 of business credit carryforwards. To satisfy section 857(a)(2)(B), X must distribute $25,000, an amount equal to its earnings and profits accumulated in non-REIT years, to its shareholders by the end of its 2004 taxable year.

(iii) Upon X's sale of Real Property in 2007, X recognizes gain of $30,000 ($110,000—$80,000). X's recognized built-in gain for purposes of applying section 1374 is $20,000 ($100,000 fair market value as of the beginning of X's first taxable year as a REIT—$80,000 basis). Because X has net income other than recognized built-in gain for its 2007 taxable year, the taxable income limitation does not apply. X, therefore, has $20,000 net recognized built-in gain for the year. Assuming that X has not used its $3,000 of net operating loss carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(2) and § 1.1374–5, X is allowed a $3,000 deduction against the $20,000 net recognized built-in gain. X would owe tax of $5,950 (35% of $17,000) on its net recognized built-in gain, except that X may use its $2,000 of business credit carryforwards to reduce the tax, assuming that X has not used the credit carryforwards in a prior taxable year and that their use is allowed under section 1374(b)(3) and § 1.1374–6. Thus, X owes tax of $3,950 under this paragraph (b). For purposes of subchapter M, X's earnings and profits for the year increase by $26,050 ($30,000 capital gain on the sale of Real Property—$3,950 tax under this paragraph (b)).

(iv) To compute X's net capital gain for purposes of section 857(b)(3) for the taxable year, the $20,000 of net recognized built-in

gain less the $3,950 of tax imposed on that gain is added to X's capital gain (or loss), if any, that is not recognized built-in gain (or loss).

(c) *Election of deemed sale treatment*—(1) *In general.* Paragraph (b) of this section does not apply if the C corporation that qualifies as a RIC or REIT or transfers property to a RIC or REIT makes the election described in paragraph (c)(5) of this section. A C corporation that makes such an election recognizes gain and loss as if it sold the converted property to an unrelated party at fair market value on the deemed sale date (as defined in paragraph (c)(3) of this section). See paragraph (c)(4) of this section concerning limitations on the use of loss in computing gain. This paragraph (c) does not apply if its application would result in the recognition of a net loss. For this purpose, net loss is the excess of aggregate losses over aggregate gains (including items of income), without regard to character.

(2) *Basis adjustment.* If a corporation recognizes a net gain under paragraph (c)(1) of this section, then the converted property has a basis in the hands of the RIC or REIT equal to the fair market value of such property on the deemed sale date.

(3) *Deemed sale date*—(i) *RIC or REIT qualifications.* If the conversion transaction is a qualification of a C corporation as a RIC or REIT, then the deemed sale date is the end of the last day of the C corporation's last taxable year before the first taxable year in which it qualifies to be taxed as a RIC or REIT.

(ii) *Other conversion transactions.* If the conversion transaction is a transfer of property owned by a C corporation to a RIC or REIT, then the deemed sale date is the end of the day before the day of the transfer.

(4) *Anti-stuffing rule.* A C corporation must disregard converted property in computing gain or loss recognized on the conversion transaction under this paragraph (c), if—

(i) The converted property was acquired by the C corporation in a transaction to which section 351 applied or as a contribution to capital;

(ii) Such converted property had an adjusted basis immediately after its acquisition by the C corporation in excess of its fair market value on the date of acquisition; and

(iii) The acquisition of such converted property by the C corporation was part of a plan a principal purpose of which was to reduce gain recognized by the C corporation in connection with the conversion transaction. For purposes of this paragraph (c)(4), the principles of section 336(d)(2) apply.

(5) *Making the deemed sale election.* A C corporation makes the deemed sale election with the following statement: ''[Insert name and employer identification number of electing corporation] elects deemed sale treatment under § 1.337(d)–7T(c) with respect to its property that was converted to property of, or transferred to, a RIC or REIT, [insert name and employer identification number of the RIC or REIT, if different from the name and employer identification number of the C corporation].'' This statement must be attached to the Federal income tax return of the C corporation for the taxable year in which the deemed sale occurs. An election under this paragraph (c) is irrevocable.

(6) *Examples.* The rules of this paragraph (c) are illustrated by the following examples:

Example 1. Deemed sale treatment on merger into RIC. (i) X, a calendar-year taxpayer, has qualified as a RIC since January 1, 2001. On May 31, 2004, Y, a C corporation and calendar-year taxpayer, transfers all of its property to X in a transaction that qualifies as a reorganization under section 368(a)(1)(C). As a result of the transfer, Y would be subject to section 1374 treatment under paragraph (b) of this section but for its timely election of deemed sale treatment under this paragraph (c). As a result of such election, Y is subject to deemed sale treatment on its tax return for the short taxable year ending May 31, 2004. On May 31, 2004, Y's only assets are Capital Asset, which has a fair market value of $100,000 and a basis of $40,000 as of the end of May 30, 2004, and $50,000 cash. Y also has an unrestricted net operating loss carryforward of $12,000 and accumulated earnings and profits of $50,000. Y has no taxable income for the short taxable year ending May 31, 2004, other than gain recognized under this paragraph (c). In 2007, X sells Capital Asset for $110,000. Assume the applicable corporate tax rate is 35%.

(ii) Under this paragraph (c), Y is treated as if it sold the converted property (Capital Asset and $50,000 cash) at fair market value on May 30, 2004, recognizing $60,000 of gain ($150,000 amount realized − $90,000 basis). Y must report the gain on its tax return for the short taxable year ending May 31, 2004. Y may offset this gain with its $12,000 net operating loss carryforward and will pay tax of $16,800 (35% of $48,000).

(iii) Under section 381, X succeeds to Y's accumulated earnings and profits. Y's accumulated earnings and profits of $50,000 increase by $60,000 and decrease by $16,800 as a result of the deemed sale. Thus, the aggregate amount of subchapter C earnings and profits that must be distributed to satisfy section 852(a)(2)(B) is $93,200 ($50,000 + $60,000 − $16,800). X's basis in Capital Asset is $100,000. On X's sale of Capital Asset in 2007, X recognizes $10,000 of gain which is taken into account in computing X's net capital gain for purposes of section 852(b)(3).

Example 2. Loss limitation. (i) Assume the facts are the same as those described in *Example 1*, but that, prior to the reorganization, a shareholder of Y contributed to Y a capital asset, Capital Asset 2, which has a fair market value of $10,000 and a basis of $20,000, in a section 351 transaction.

(ii) Assuming that Y's acquisition of Capital Asset 2 was made pursuant to a plan a principal purpose of which was to reduce the amount of gain that Y would recognize in connection with the conversion transaction, Capital Asset 2 would be disregarded in computing the amount of Y's net gain on the conversion transaction.

(d) *Exceptions*—(1) *Gain otherwise recognized.* Paragraph (a) of this section does not apply to any conversion transaction to the extent that gain or loss otherwise is recognized on such conversion transaction. See, for example, sections 336, 351(b), 356, 357(c), 367, and 1001.

(2) *Re-election of RIC or REIT status*—(i) *Generally.* Except as provided in paragraphs (d)(2)(ii) and (d)(2)(iii) of this section, paragraph (a)(1) of this section does not apply to any corporation that—

(A) Immediately prior to qualifying to be taxed as a RIC or REIT was subject to tax as a C corporation for a period not exceeding two taxable years; and

(B) Immediately prior to being subject to tax as a C corporation was subject to tax as a RIC or REIT for a period of at least one taxable year.

(ii) *Property acquired from another corporation while a C corporation.* The exception described in paragraph (d)(2)(i) of this section does not apply to property acquired by the corporation while it was subject to tax as a C corporation from another corporation (whether or not a C corporation) in a transaction that results in the acquirer's basis in the property being determined by reference to a C corporation's basis in the property.

(iii) *RICs and REITs previously subject to section 1374 treatment.* If the RIC or REIT had property subject to paragraph (b) of this section before the RIC or REIT became subject to tax as a C corporation as described in paragraph (d)(2)(i) of this section, then paragraph (b) of this section applies to the RIC or REIT upon its requalification as a RIC or REIT, except that the 10-year recognition period with respect to such property is reduced by the portion of the 10-year recognition period that expired before the RIC or REIT became subject to tax as a C corporation and by the period of time that the corporation was subject to tax as a C corporation.

(e) *Special rule for partnerships.* The principles of this section apply to property transferred by a partnership to a RIC or REIT to the extent of any C corporation partner's proportionate share of the transferred property. For example, if a C corporation owns a 20 percent interest in a partnership and that partnership contributes an asset to a REIT in a section 351 transaction, then the partnership shall be treated as a C corporation with respect to 20 percent of the asset contributed to the REIT. If the partnership were to elect deemed sale treatment under paragraph (c) of this section with respect to such transfer, then any gain recognized by the partnership on the deemed sale must be specially allocated to the C corporation partner.

(f) *Effective date.* This section applies to conversion transactions that occur on or after January 2, 2002. For conversion transactions that occurred on or after June 10, 1987 and before January 2, 2002, see § 1.337(d)–5T and § 1.337(d)–6T. This section expires on December 31, 2004.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 5.** In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified or described	Current OMB control No.
* * * * *	
1.337(d)–6T	1545–1672
1.337(d)–7T	1545–1672
* * * * *	

Approved: December 20, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 01–31969 Filed 12–31–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD09–01–122]

RIN 2115–AA98

Special Anchorage Area: Henderson Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule; request for additional comments.

SUMMARY: The purpose of this document is to solicit comments on the appropriate size of the Henderson Harbor Special Anchorage Area. On March 7, 2000, the Coast Guard published a final rule that substantially increased the size of the special anchorage area. Due to concerns from the local community, the Coast Guard is soliciting additional comments regarding the appropriate size of the Special Anchorage Area.

DATES: Comments must be received by April 2, 2002.

ADDRESSES: You may mail comments to Commander (mco–1), Ninth Coast Guard District, 1240 E. Ninth Street, Cleveland, Ohio 44199–2060, or deliver them to room 2069 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 902–6056.

The Ninth Coast Guard District Marine Safety Office maintains the public docket. Comments, and documents indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 2069, Ninth Coast Guard District, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Ronald Branch, Chief, Marine Safety Compliance Operations Branch, Ninth Coast Guard District Marine Safety Office, 1240 E. Ninth Street, Cleveland, Ohio 44199–2060. The phone number is (216) 902–6056.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit data, views, or arguments. Persons submitting comments should include their names and addresses, identify this docket (CGD09–01–122) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Background Information

The Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on November 5, 1999 (64 FR 60399). During the comment period for the NPRM, the Coast Guard received several positive comments from the community regarding the proposed enlargement of the anchorage area. Following the close of the comment period on January 4, 2000, the Coast Guard published a final rule in the **Federal Register** on March 7, 2000 (65 FR 11892).

The final rule extended anchorage area A approximately 1000 feet while keeping the width approximately the same as the existing anchorage area. The additional anchorage area was requested to compensate for the loss of safe anchorage area due to lower water levels. Since vessels must request permission from the Henderson Harbor Town Harbormaster before anchoring or mooring in the special anchorage area, the additional area gave the Town Harbormaster increased deepwater areas in which to direct vessels for safe anchorage.

The Coast Guard has received letters and requests from members of the community, as well as town leaders, indicating that they would like to see an additional change to the anchorage area. Persons submitting comments should do as directed under request for comments above, and reply to the following specific suggested anchorage areas. Form letters simply citing anecdotal evidence or stating support for or opposition to regulations, without providing substantive data or arguments do not supply support for regulations. The following two options are being considered:

1. Continue To Use Current Enlarged Anchorage Area

(a) *Area A.* The area in the southern portion of Henderson Harbor west of the Henderson Harbor Yacht Club bounded by a line beginning at latitude 43°51′ 08.8″ N, longitude 76°12′ 08.9″ W, thence to 43°51′09.0 N, 76°12.19.0 W, thence to 43°51′33.4″ N, 76°12′19.0″ W, thence to 43°51′33.4″ N, 76°12′09.6″ W, thence to the point of the beginning. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Area B.* The area in the southern portion of Henderson Harbor north of Graham Creek Entrance Light bounded by a line beginning at latitude

43°51′21.8″ N, longitude 76°11′58.2″ W, thence to latitude 43°51′21.7″ N, longitude 76°12′05.5″ W, thence to latitude 43°51′33.4″ N, longitude 76°12′06.2″ W, thence to latitude 43°51′33.6″ N, longitude 76°12′00.8″ W, thence to the point of the beginning. All nautical positions are based on North American Datum 1983 (NAD 83).

2. Revert Anchorage Area A Back to Previous Smaller Size

(a) *Area A.* The area in the southern portion of Henderson Harbor west of the Henderson Harbor Yacht club bounded by a line beginning at 43°51′08.8′ N, 76°12′08.9″ W, thence to 43°51′09.0″ N, 76°12′19.0″ W, thence to 43°51′23.8″ N, 76°12′19.0 W, thence to 43°51′23.8″ N, 76°12′09.6″ W, and then back to the beginning. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Area B.* The area in the southern portion of Henderson Harbor north of Graham Creek Entrance Light bounded by a line beginning at latitude 43°51′21.8″ N, longitude 76°11′58.2″ W, thence to latitude 43°51′21.7″ N, longitude 76°12′05.5″ W, thence to latitude 43°51′33.4″ N, longitude 76°12′06.2″ W, thence to latitude 43°51′33.6″ N, longitude 76°12′00.8″ W, thence to the point of the beginning. All nautical positions are based on North American Datum 1983 (NAD 83).

Dated: December 17, 2001.

James D. Hull,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 01–32042 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 252–0312c; FRL–7118–3]

Interim Final Determination That State Has Corrected the Deficiency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a direct final rulemaking fully approving revisions to the California State Implementation Plan. The revisions concern Mojave Desert Air Quality Management rule 1161. EPA has also published a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on EPA's direct final action, EPA will withdraw its direct final rule and will consider any comments received before taking final action on the State's submittal. Based on the proposal, EPA is making an interim final determination by this action that the State has corrected the deficiency for which a sanctions clock began on May 11, 2000. This action will defer the imposition of the offset and highway sanctions. Although this action is effective upon publication, EPA will take comment. If no comments are received on EPA's approval of the State's submittal, the direct final action published in today's **Federal Register** will also finalize EPA's determination that the State has corrected the deficiency that started the sanctions clock. If comments are received on EPA's approval and this interim final action, EPA will publish a final notice taking into consideration any comments received.

DATES: This action becomes effective January 2, 2002. Comments must be received by February 1, 2002.

ADDRESSES: Written comments must be submitted to Andrew Steckel, Rulemaking Section (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, CA 94105

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Mohave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 972–3960

SUPPLEMENTARY INFORMATION:

I. Background

On June 29, 1995, the State submitted MDAQMD Rule 1161, for which EPA published a limited disapproval in the **Federal Register** on May 11, 2000. 65 FR 11674. EPA's disapproval action started an 18-month clock for the imposition of one sanction (followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted a revised version of this rule on November 8, 2001. EPA is taking direct final action on this submittal pursuant to its modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules section of today's **Federal Register**, EPA has issued a direct final full approval of the State of California's submittal of MDAQMD Rule 1161. In addition, in the Proposed Rules section of today's **Federal Register**, EPA has proposed full approval of the State's submittal.

Based on the proposal set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have been corrected.

This action does not stop the sanctions clock that started for this area on May 11, 2000. However, this action will defer the imposition of the offset and highway sanctions. If EPA's direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed or deferred sanctions. If EPA must withdraw the direct final action based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiencies, EPA will also determine that the State did not correct the deficiency and the sanctions consequences described in the sanctions rule will apply.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiency that started the sanctions clock. Based on this action, imposition of the offset and highway sanctions will be deferred until EPA's direct final action fully approving the

State's submittal becomes effective or until EPA takes action proposing or finally disapproving in whole or part the State submittal. If EPA's direct final action fully approving the State submittal becomes effective, at that time any sanctions clocks will be permanently stopped and any imposed sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this notice is to relieve a restriction. *See* 5 U.S.C. 553(d)(1).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 29, 2001.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 01–32098 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 252–312a; FRL–7118–1]

Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_X) emissions from cement kilns. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on March 4, 2002 without further notice, unless EPA receives adverse comments by February 1, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, Stationary Source Division, Rule

Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.
Mojave Desert AQMD, 14306 Park Avenue, Victorville, CA 92392–2310.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
MDAQMD	1161	Portland Cement Kilns	10/22/01	11/8/01

On November 21, 2001, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule 1161 into the SIP on May 11, 2000. The MDAQMD adopted revisions to the SIP-approved version on October 22, 2001 and CARB submitted them to us on November 8, 2001.

C. What Is the Purpose of the Submitted Rule Revisions?

Rule 1161 applies to cement manufacturing operation within the Federal Ozone non-attainment area regulated by the MDAQMD. This rule controls emission of oxides of nitrogen (NO_X) from Portland cement kilns.

On May 11, 2000, the EPA published a limited approval and limited disapproval of this rule, because some rule provisions conflicted with section 110 and part D of the Clean air Act. Those provisions included the following:

1. Alternative Compliance strategy in section (D).
2. Exemption during start-up and shutdown in section (G)(1)(a).
3. Referring to a rule not approved in the SIP in section (G)(1)(c).

The revisions are designed primarily to correct these deficiencies. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating This Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see sections 182(a)(2)(A) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The MDAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 1161 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
3. Nitrogen Oxides (NO_X) reasonably Available Control Technology (RACT) for the repowering of Utility Boilers, U.S. EPA Office of Air Quality Planning and Standards, March 9, 1994.

B. Does This Rule Meet the Evaluation Criteria?

We believe this rule corrects the deficiencies identified in our May 11, 2000 action and is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by February 1, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on March 4, 2002. This will incorporate this rule into the federally enforceable SIP.

III. Background Information

Why Was This Rule Submitted?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency NO_X rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101– 549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

TABLE 2.—OZONE NONATTAINMENT MILESTONES—Continued

Date	Event
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 4, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 29, 2001.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(286) and (c)(287) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(286) [Reserved].

(287) New and amended regulations for the following APCD were submitted on November 8, 2001 by the Governor's designee.

(i) Incorporation by reference.

(A) Mojave Desert Air Quality Management District.

(1) Rule 1161 adopted on October 22, 2001.

* * * * *

[FR Doc. 01–32099 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. 2001–11213, Notice No. 1]

RIN 2130–AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2002

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 2000 rail industry random testing positive rate was .20 percent for drugs and .79 percent for alcohol. Since the industry-wide random drug testing positive rate continues to be below 1.0 percent, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2002 through December 31, 2002 will remain at 25 percent of covered railroad employees. Since the random alcohol

testing violation rate has remained below .5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2002 through December 31, 2002.

DATES: This notice is effective January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20005, (Telephone: (202) 493–6313).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 2002 Random Drug and Alcohol Testing Rates

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year (see 49 CFR 219.602, 219.608).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at 50 percent. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates). FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

In 1994, FRA set the 1995 minimum random drug testing rate at 25 percent because 1992 and 1993 industry drug testing data indicated a random drug testing positive rate below 1.0 percent; since then FRA has continued to set the minimum random drug testing rate at 25 percent as the industry positive rate has consistently remained below 1.0 percent. In this notice, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2002 through December 31, 2002, since the industry random drug testing positive rate for 2001 was .20 percent.

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, if the industry-wide violation rate is less than 1.0 percent but greater than .5 percent, the rate will be 25 percent. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than .5 percent for two calendar years while testing at a higher rate. Since the industry-wide violation rate for alcohol has remained below .5 percent for the last two years, FRA is maintaining the minimum random alcohol testing rate at 10 percent of covered railroad employees for the period January 1, 2002 through December 31, 2002.

This notice sets the minimum random testing rates required next year. Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC, on December 21, 2001.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 01–32047 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 240

[FRA Docket No. RSOR–9, Notice 13]

RIN 2130–AA74

Qualification and Certification of Locomotive Engineers; and Other Proceedings

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the definition of *filing* as used in the Federal Railroad Administration's rule on engineer certification in order to address recent, unavoidable postal delays. Due to terrorism, the Department of Transportation has implemented additional security procedures regarding mail delivery. The purpose of this interim final rule is to temporarily amend the regulation so that parties in adjudicatory proceedings pursuant to subpart E, Dispute Resolution Procedures of part 240 will not be prejudiced by circumstances beyond their control.

DATES: (1) *Effective Date:* This regulation is effective January 2, 2002.

(2) Written comments concerning this rule must be filed no later than March 4, 2002. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments should be submitted to the Docket Clerk, Department of Transportation Central Docket Management System (DMS), Nassif Building, Room Pl–401, 400 Seventh Street, SW., Washington, DC 20590 or, in accordance with the electronic standards and requirements, at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Alan H. Nagler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., RCC–11, Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6049).

SUPPLEMENTARY INFORMATION:

I. Background

In response to acts of terrorism beginning on September 11, 2001, the timely delivery of mail by the United States Postal Service (USPS) and private mail services were negatively impacted by the temporary closing of airline shipping facilities. About one month later, additional delays were caused by more acts of terrorism. On Tuesday, October 16, USPS mail delivery to the Department of Transportation's (DOT) headquarters buildings was halted and did not resume until November 2. DOT's mail was halted in order to take appropriate safety measures concerning the threat of bio-terrorism through mail handling and delivery. The safety of DOT employees and the public clearly override the short-term concern of timely mail delivery. Although it was necessary to establish new security systems, the delay in processing mail may have had unintended consequences.

As envisioned in a notice posted on DMS's website, FRA will take these mail delays into account with respect to rulemaking documents that have comment periods that may have closed before regular mail delivery resumed. FRA will do everything it can to ensure that comments that would otherwise have been received before the close of the comment period are considered. For example, FRA generally has authority to consider late-filed comments and will do so to the extent that it can; FRA will also take note of the postmark date for late-filed comments.

In contrast, federal agencies do not have authority to consider late-filed petitions in adjudicatory proceedings where the filing date requirements have

been established by regulation. This is the situation FRA faces in trying to fairly consider documents filed by parties that (1) have been harmed or delayed by the recent mail disruptions or (2) could potentially be harmed or delayed by these disruptions.

The source of FRA's timeliness issue with regard to engineer certification proceedings is found in the definition of *filing*. That definition is applicable to the adjudicatory proceedings provided for in Subpart E, Dispute Resolution Procedures of the Locomotive Engineer Certification Standards. 49 CFR Part 240. According to section 240.7, ''*[f]iling* means that a document to be filed under this part shall be deemed filed only upon receipt by the Docket Clerk.'' As a result of this definition and the mail delivery delays beginning September 11, it is possible that a party could have attempted to file a document by mail, the document could have been received by DOT, and yet the document may not have been date stamped as received until days or weeks later. In order to prevent any unfair and unintended consequences, FRA is relaxing this filing requirement to permit the date mailing was completed (i.e., the postmark date unless the filer proves otherwise) to take the place of the receipt date during this unique state of alert.

This change in the filing requirements will ensure that documents mailed in a timely fashion will not be considered late if received after the due date by FRA's Docket Clerk pursuant to sections 240.403 and 240.405, or by DMS's Docket Clerk pursuant to sections 240.407 and 240.409, and by FRA's Administrator pursuant to section 240.411. The amended rule reflects this policy by adding the phrase ''or if sent by mail on or after September 4, 2001, the date mailing was completed'' to the definition. This change covers items postmarked on or after September 4, 2001 by the USPS or sent by other mail services on or after that date. By including all items sent by that date, FRA hopes to effectively include all documents that parties attempted to timely file under the original filing rule without being either under-inclusive or over-inclusive.

In addition, filers are encouraged to use the electronic submission system on the dockets Web page (*http://dms.dot.gov*) by clicking on ''ES Submit'' and following the online instructions. This option is available for filing hearing requests and documents pursuant to sections 240.407 and 240.409. A party filing electronically should note that the rule has not been amended to accept late electronic filings. Electronic filings that are received after the specified dockets facility hours shall be deemed to be constructively received on the next dockets facility business day. *See* 14 CFR 302.3.

Furthermore, FRA rewrote the remaining part of the definition to more clearly state what is meant by *filing* without using the defined word itself in the definition. Thus, ''*[f]iling* means that a document to be filed under this part shall be deemed filed upon receipt by the Docket Clerk'' has been amended to read that ''*[f]ile, filed and filing* mean submission of a document under this part on the date when the Docket Clerk receives it * * *'' Both phrases have the same meaning. In addition, the rule was amended to reflect that all of the tenses of ''file'' are covered by the definition.

II. Regulatory Evaluation

A. Public Proceedings

The Administrative Procedure Act, specifically 5 U.S.C. 553(b)(3)(B), provides that a notice and comment period is not required when ''the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Accordingly, this amendment to part 240 is issued without notice and comment. FRA has chosen this course of action because notice and comment under these circumstances would be impracticable, unnecessary, and contrary to the public interest. The implementation of new security systems vis-a-vis mail handling in response to national security interests requires emergency action. If FRA did not amend this definition, it is foreseeable that parties relying on USPS or other mail services would be prejudiced. FRA is making this rule effective immediately for the same reasons it is dispensing with the need for prior comment.

Despite the need for prompt action, FRA is soliciting comments on this rule and will consider those comments in determining whether there is a need to take further action to improve these regulations. If comments persuade FRA that additional amendment to the definition is necessary, it will address them in a subsequent notice. Written comments must be submitted no later than 60 days after publication in the **Federal Register**, but late comments will be considered to the extent practicable.

B. Regulatory Impact

E.O. 12866 and DOT Regulatory Policies and Procedures

This interim final rule has been evaluated in accordance with existing regulatory policies and is considered to be nonsignificant under Executive Order 12866 and is not significant under the DOT policies and procedures (44 FR 11034; February 26, 1979).

C. Regulatory Flexibility Act

FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small railroads are subject to this regulation, the economic impact of this amendment to the rule will not be significant since it only modifies a definition involved in dispute resolution proceedings conducted by FRA. The provisions do not make any changes to the way that a railroad would conduct its own proceedings pursuant to this part. This technical change should prevent injustice that would otherwise result from the actions of the DOT to ensure the safety of mail it receives.

This interim final rule will have no direct impact on small units of government, businesses, or other organizations. State rail agencies are not required to participate in the portion of part 240 that includes the definition.

D. Paperwork Reduction Act

There are no new collection of information requirements contained in this rule and, in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the record keeping and reporting requirements already contained in this rule have been approved by the Office of Management and Budget. The OMB approval number was published in a previous amendment to part 240 and can be found in section 240.13. The information collection requirements of this rule became effective on June 19, 1991, and were later amended on April 9, 1993.

E. Environmental Impact

FRA has evaluated this regulation in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from

detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly effecting the quality of the human environment.

F. Federalism Implications

FRA believes that it is in compliance with Executive Order 13132. This rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This regulation will not have federalism implications that impose compliance costs on State and local governments.

List of Subjects in 49 CFR Part 240

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

Therefore, in consideration of the foregoing, FRA amends part 240, Title 49, Code of Federal Regulations as follows:

PART 240—[AMENDED]

■ 1. The authority citation for Part 240 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135; 49 CFR 1.49.

* * * * *

■ 2. Section 240.7 is amended by removing the definition of *filing* and adding the following definition in alphabetical order:

§ 240.7 Definitions.

As used in this part—

* * * * *

File, filed and filing mean submission of a document under this part on the date when the Docket Clerk receives it, or if sent by mail on or after September 4, 2001, the date mailing was completed.

* * * * *

Issued in Washington, DC, on December 21, 2001.

Allan Rutter,

Administrator.

[FR Doc. 01–32049 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 67, No. 1
Wednesday, January 2, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

[Docket No. FGIS–2001–003a]

RIN 0580–AA79

Fees for Official Inspection and Official Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to increase certain fees by approximately 4.6 percent; i.e., contract and noncontract hourly rates, certain unit rates, and the administrative tonnage fee increases. These fees apply only to official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. These increases are needed to cover increased operational costs resulting from the approximate 4.6 percent anticipated January 2002 Federal pay increase. GIPSA anticipates the increase in the user fees will generate approximately $703,000 in additional revenue.

DATES: February 1, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Written comments must be submitted to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW, Room 1647–S, Washington, DC 20250–3604, or faxed to (202) 690–2755. Comments may also be sent by e-mail to: *comments@gipsadc.gov.* Please state that your comments refer to Docket No. FGIS 2001–003a. Comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his e-mail address: *Dorr@gipsadc.usda.gov,* or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION: Executive Order 12866, Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Retained earnings balances are adjusted to reflect prior year revenue and obligations realized in the year reported. In FY 1999, GIPSA's operating costs were $23,176,643 with revenue of $22,971,204, resulting in a negative margin of $205,440. In FY 2000, GIPSA's operating costs were $24,146,428 with revenue of $23,150,188 that resulted in a negative margin of $996,240 and a negative reserve balance of $938,147. Using the most recent data available, GIPSA's FY 2001 operating costs were $25,670,126 with revenue of $23,977,240 that resulted in a negative margin of $1,692,886. The current reserve negative balance of $2,572,080 is well below the desired 3-month reserve of approximately $6 million.

Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The anticipated general and locality salary increase that averages 4.6 percent for GIPSA employees, effective January 2002, will increase GIPSA's costs by approximately $703,000.

GIPSA has reviewed the financial position of the inspection and weighing program based on the anticipated increased salary and benefit costs along with the projected FY 2002 workload of 77 million metric tons. Based on the review, GIPSA has concluded that an approximate 4.6 percent increase will have to be recovered through increases in fees.

The proposed fee increase primarily applies to entities engaged in the export of grain. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA on a fee basis at 32 export facilities. All of these facilities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities established by the Small Business Administration.

Some entities that request nonmandatory official inspection and weighing services at other than export locations could be considered small entities. The impact on these small businesses is similar to any other business; that is, an average 4.6 percent increase in the cost of official inspection and weighing services. This proposed increase should not significantly affect any business requesting official inspection and weighing services. Furthermore, any of these small businesses that wish to avoid the fee increase may elect to do so by using an alternative source for inspection and weighing services. Such a decision should not prevent the business from marketing its products.

There would be no additional reporting or recordkeeping requirements imposed by this action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in Part 800 have been previously approved by the Office of Management and Budget under control number 0580–0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this proposed rule.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning

the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this proposed rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Proposed Action

The USGSA (7 U.S.C. 71 *et seq.*) authorizes GIPSA to provide official grain inspection and weighing services and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs. The current USGSA fees were published in the **Federal Register** on July 9, 2001 (66 FR 35751), and became effective on August 8, 2001.

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Retained earnings balances are adjusted to reflect prior year revenue and obligations realized in the year reported. In FY 1999, GIPSA's operating costs were $23,176,643 with revenue of $22,971,204, resulting in a negative margin of $205,440. In FY 2000, GIPSA's operating costs were $24,146,428 with revenue of $23,150,188 that resulted in a negative margin of $996,240 and a negative reserve balance of $938,147. Using the most recent data available, GIPSA's FY 2001 operating costs were $25,670,126 with revenue of $23,977,240 that resulted in a negative margin of $1,692,886. The current reserve negative balance of $2,572,080 is well below the desired 3-month reserve of approximately $6 million. Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The salary increase that GIPSA anticipates becoming effective in January 2002 averages 4.6 percent for GIPSA employees. Overall, program costs are estimated to increase by approximately $703,000. GIPSA has reviewed the financial position of the inspection and weighing program based on the anticipated increased salary and benefit costs, along with the projected FY 2002 workload of 77 million metric tons. Based on the review, GIPSA has concluded that an approximate 4.6 percent increase will have to be recovered through increases in fees.

The current hourly fees are:

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime	Holidays
1-year contract	$27.40	$29.80	$38.60	$46.40
6-month contract	30.20	32.00	41.00	53.00
3-month contract	34.40	35.60	44.60	55.40
Noncontract	40.00	42.00	51.00	62.60

GIPSA has also identified certain unit fees, for services not performed at an applicant's facility, that contain direct labor costs and would require a fee increase. Further, GIPSA has identified those costs associated with salaries and benefits that are covered by the administrative metric tonnage fee. The anticipated 4.6 percent cost-of-living increase to salaries and benefits covered by the administrative tonnage fee results in an overall increase of an average of 4.6 percent to the administrative tonnage fee. Accordingly, GIPSA is proposing an approximate 4.6 percent increase to certain hourly rates, certain unit rates, and the administrative tonnage fee in 7 CFR 800.71, Table 1-Fees for Official Services Performed at an Applicant's Facility in an Onsite FGIS Laboratory; Table 2-Services Performed at Other Than an Applicant's Facility in an FGIS Laboratory; and Table 3, Miscellaneous Services.

This proposed rule provides a 30-day period for interested persons to comment. This comment period is deemed appropriate because grain export volume and associated requests for official services for such grain are projected to further decrease in the coming months due to seasonal and other adjustments. Accordingly, given the current level of the operating reserve, it would be necessary to implement any fee increase that may result from this rulemaking as soon as possible.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain.

For the reasons set out in the preamble, 7 CFR part 800 is proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.71 is amended by revising Schedule A in paragraph (a) to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime [2]	Holidays
(1) Inspection and Weighing Services Hourly Rates (per service representative)				
1-year contract	$28.60	$31.20	$40.40	$48.60
6-month contract	31.60	33.40	42.80	56.00
3-month contract	36.00	37.20	46.60	58.00

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]—Continued

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime [2]	Holidays
Noncontract	41.80	44.00	53.40	65.40
(2) Additional Tests (cost per test, assessed in addition to the hourly rate) [3]				
(i) Aflatoxin (other than Thin Layer Chromatography)	$8.50			
(ii) Aflatoxin (Thin Layer Chromatography method)	20.00			
(iii) Corn oil, protein, and starch (one or any combination)	1.50			
(iv) Soybean protein and oil (one or both)	1.50			
(v) Wheat protein (per test)	1.50			
(vi) Sunflower oil (per test)	1.50			
(vii) Vomitoxin (qualitative)	12.50			
(viii) Vomitoxin (quantitative)	18.50			
(ix) Waxy corn (per test)	1.50			
(x) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.				
(xi) Other services				
(a) Class Y Weighing (per carrier)				
(1) Truck/container	.30			
(2) Railcar	1.25			
(3) Barge	2.50			
(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier)				
(i) All outbound carriers (per-metric-ton) [4]				
(a) 1–1,000,000	$0.1152			
(b) 1,000,001–1,500,000	0.1051			
(c) 1,500,001–2,000,000	0.0568			
(d) 2,000,001–5,000,000	0.0420			
(e) 5,000,001–7,000,000	0.0230			
(f) 7,000,001 +	0.0105			

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and reinspection services will be assessed the same fee as the original inspection service.

[4] The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1 2]

(1) Original Inspection and Weighing (Class X) Services	
(i) Sampling only (use hourly rates from Table 1)	
(ii) Stationary lots (sampling, grade/factor, & checkloading)	
(a) Truck/trailer/container (per carrier)	$19.25
(b) Railcar (per carrier)	28.90
(c) Barge (per carrier)	185.00
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	9.95
(b) Railcar (per carrier)	19.25
(c) Barge (per carrier)	110.00
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iv) Other services	
(a) Submitted sample (per sample—grade and factor)	11.50
(b) Warehouseman inspection (per sample)	19.50
(c) Factor only (per factor—maximum 2 factors)	5.15
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.02
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	12.80
(f) Class X Weighing (per hour per service representative)	55.00
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test—other than TLC method)	29.00
(b) Aflatoxin (per test—TLC method)	110.00
(c) Corn oil, protein, and starch (one or any combination)	8.80
(d) Soybean protein and oil (one or both)	8.80
(e) Wheat protein (per test)	8.80
(f) Sunflower oil (per test)	8.80
(g) Vomitoxin (qualitative)	30.50
(h) Vomitoxin (quantitative)	37.50
(i) Waxy corn (per test)	10.00

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1] [2]—Continued

(j) Canola (per test—00 dip test)	10.00
(k) Pesticide Residue Testing [3]	
(1) Routine Compounds (per sample)	210.00
(2) Special Compounds (per service representative)	110.00
(l) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(2) Appeal inspection and review of weighing service.[4]	
(i) Board Appeals and Appeals (grade and factor)	79.50
(a) Factor only (per factor—max 2 factors)	41.80
(b) Sampling service for Appeals additional (hourly rates from Table 1)	
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC)	29.50
(b) Aflatoxin (TLC)	118.00
(c) Corn oil, protein, and starch (one or any combination)	16.80
(d) Soybean protein and oil (one or both)	16.80
(e) Wheat protein (per test)	16.80
(f) Sunflower oil (per test)	16.80
(g) Vomitoxin (per test—qualitative)	40.00
(h) Vomitoxin (per test—quantitative)	45.00
(i) Vomitoxin (per test—HPLC Board Appeal)	136.00
(j) Pesticide Residue Testing [3]	
(1) Routine Compounds (per sample)	210.00
(2) Special Compounds (per service representative)	110.00
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1	
(iii) Review of weighing (per hour per service representative)	79.20
(3) Stowage examination (service-on-request) [3]	
(i) Ship (per stowage space) (Minimum $255.00 per ship)	51.00
(ii) Subsequent ship examinations (same as original) (Minimum $153.00 per ship)	
(iii) Barge (per examination)	41.00
(iv) All other carriers (per examination)	16.00

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72(b).

[3] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

[4] If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of $2.50 per sample by the Service.

TABLE 3.—MISCELLANEOUS SERVICES[1]

(1) Grain grading seminars (per hour per service representative) [2]	$55.00
(2) Certification of diverter-type mechanical samplers (per hour per service representative) [2]	55.00
(3) Special weighing services (per hour per service representative) [2]	
(i) Scale testing and certification	55.00
(ii) Evaluation of weighing and material handling systems	55.00
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	55.00
(iv) NTEP Prototype evaluation of Railroad Track Scales	55.00 110.00 (plus usage fee per day for test car)
(v) Mass standards calibration and reverification	55.00
(vi) Special projects	55.00
(4) Foreign travel (per day per service representative)	490.00
(5) Online customized data EGIS service	
(i) One data file per week for 1 year	500.00
(ii) One data file per month for 1 year	300.00
(6) Samples provided to interested parties (per sample)	2.60
(7) Divided-lot certificates (per certificate)	1.50
(8) Extra copies of certificates (per certificate)	1.50
(9) Faxing (per page)	1.50
(10) Special mailing (actual cost)	
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1)	

[1] Any requested service that is not listed will be performed at $55.00 per hour.

[2] Regular business hours-Monday through Friday-service provided at other than regular hours charged at the applicable overtime hourly rate.

Dated: December 26, 2001.

John Pitchford,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 01–32154 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–EN–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–07–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 airplanes. This proposed AD would require you to replace the metered connector and oxygen tubing and related components in the rear seat bench. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to correct for insufficient oxygen quantity available to occupants of the rear seat bench in some emergency conditions, which could result in reduced occupant safety at the rear bench seat location.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before February 19, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–07–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2001–CE–07–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that, because of a design problem, the flow of oxygen to each occupant on the rear seat bench is insufficient. The current configuration uses two-metered connectors, which restricts the flow of oxygen.

What are the consequences if the condition is not corrected? If not corrected, insufficient oxygen quantity available to occupants of the rear seat bench in some emergency conditions could occur which could result in reduced occupant safety at the rear bench seat location.

Is there service information that applies to this subject? Pilatus has issued Pilatus PC–12 Service Bulletin No: 35–002, dated December 19, 2000.

What are the provisions of this service information? The service bulletin includes procedures for replacing the two-metered connector and oxygen tubing with a system that incorporates a single-metered connector. This includes replacements in the following areas:

—The tubing assembly—oxygen (with coupling);

—Assembly—bracket and grommet; and

—Clamp-hose.

What action did the FOCA take? The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB 2001–001, dated December 28, 2000, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in Switzerland and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What has FAA decided? The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Pilatus Model PC–12 and PC–12/45 airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 5 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed replacements:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours at $60 per hour = $120	$0. Pilatus will provide free parts	$120 per airplane	$600

Compliance Time of this Proposed AD

What would be the compliance time of this proposed AD? The compliance time of this proposed AD is within the next 30 calendar days after the effective date of this AD.

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? The oxygen flow on the rear bench seat is reduced through two metered connectors when only one reduction is necessary. Because these parts of poor design could have been installed in the field or at the factory, the problem has the same chance of occurring on an airplane with 50 hours TIS as one with 1,000 hours TIS. Therefore, we believe that 30 calendar days will:

—Ensure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and

—Not inadvertently ground any of the affected airplanes.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft LTD.: Docket No. 2001–CE–07–AD

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers with rear bench seats (part number 525.22.12.016) installed, that are certificated in any category:

Model	Serial numbers
All PC–12 and PC–12/45.	From 101 through 365

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct for insufficient oxygen quantity available to occupants of the rear seat bench in some emergency conditions, which could result in reduced occupant safety at the rear bench seat location.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Replace the tubing assembly—oxygen (with coupling) (P/N 957.10.25.231), assembly—bracket and grommet (P/N Service 525.22.12.044), and clamp—hose (946.33.21.301), or FAA-approved equivalent parts in the rear bench seat (part number (P/N) 525.22.12.016) with a new tubing assembly—oxygen (with coupling) (P/N 957.10.25.232), assembly—bracket and grommet (P/N 525.22.12.049), and clamp—hose (P/N 946.33.21.302), or FAA-approved equivalent part.	Within the next 30 days after the effective date of this AD.	Follow the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus Aircraft Ltd. PC–12 Service Bulletin, 35–002, dated December 19, 2000
(2) Do not install any rear bench seat (P/N 525.22.12.016), or any FAA-approved equivalent part unless installed with tubing assembly—oxygen (with coupling) (P/N 957.10.25.232), assembly—bracket and grommet (P/N 525.22.12.049), clamp—hose (946.33.21.302), or FAA-approved equivalent parts.	As of the effective date of this AD	Not Applicable
(3) Do not install tubing assembly—oxygen (with coupling) (P/N 957.10.25.231), assembly—bracket and grommet (P/N 525.22.12.044), clamp—hose (946.33.21.301), or FAA-approved equivalent parts.	As of the effective date of this AD	Not Applicable

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Swiss AD HB 2001–001, dated December 28, 2000.

Issued in Kansas City, Missouri, on December 21, 2001.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32151 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–350–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes. This proposal would require a one-time inspection of the hydraulically operated valve of the parking brake of the main landing gear to identify the part and serial numbers, and follow-on actions, if necessary. This action is necessary to prevent leakage of the valve, which could result in failure of the ''blue'' hydraulic system and consequent failure of alternate parking brake and emergency braking systems. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 1, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–350–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–350–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–350–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–350–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus

Model A330 and A340 series airplanes. The DGAC advises that leakage of the hydraulically operated valve of the parking brake of the main landing gear has been identified on certain Model A320 series airplanes. Hydraulic fluid leakage was found at the hydraulic connections and the vent hole of the valve. Leakage of the hydraulically operated valve, if not corrected, could result in failure of the ''blue'' hydraulic system and consequent failure of alternate parking brake and emergency braking systems.

Certain valves having serial numbers marked with a ''V'' or ''VF+E'' were modified and are not subject to the unsafe condition addressed by this AD.

Similar Model

The same hydraulically operated valve is installed on Model A330 and A340 series airplanes. Therefore, those airplanes are also subject to the unsafe condition identified by this proposed AD.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A330–32A3139 and A340–32A4176, both including Appendix 01, both dated September 14, 2001. The service bulletins describe procedures for a one-time detailed visual inspection of the hydraulically operated valve of the parking brake of the main landing gear to identify the part and serial numbers, and follow-on actions, if necessary. The follow-on actions consist of a visual inspection for hydraulic fluid leakage at the valve; repair or replacement of the valve with a new or serviceable valve if leakage is found, or repeat inspections if valve is not replaced, or if the valve is replaced with a valve having the same part or serial number; and an operational test following repair or replacement of the valve. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC issued French airworthiness directives 2001–516(B) and 2001–517(B), both dated October 31, 2001, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between this AD and the Service Bulletins

Although the service bulletins specify that the manufacturer may be contacted for disposition of certain repairs, this AD would require such repairs to be accomplished per a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this AD.

Cost Impact

The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,080, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2001–NM–350–AD.

Applicability: Model A330 and A340 series airplanes, as listed in Airbus Service Bulletin A330–32A3139 or A340–32A4176, both dated September 14, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of the hydraulically operated valve of the parking brake of the main landing gear, which could result in failure of the ''blue'' hydraulic system and consequent failure of alternate parking brake and emergency braking systems, accomplish the following:

Inspections/Follow-On Actions

(a) Within 7 days after the effective date of this AD: Do a one-time detailed visual inspection to determine the part number (P/N) and serial number (S/N) of the hydraulically operated valve of the parking brake of the main landing gear per Airbus Service Bulletin A330–32A3139 (for Model A330 series airplanes) or A340–32A4176 (for Model A340 series airplanes), both including Appendix 01, both dated September 14, 2001, as applicable.

(1) If no P/N or S/N is identified as affected equipment per the applicable service bulletin, no further action is required by this AD.

(2) If any P/N or S/N is identified as affected equipment per the applicable service bulletin: Before further flight, perform the follow-on actions (which may include a visual inspection for hydraulic fluid leakage at the valve; repair or replacement of the valve with a new or serviceable valve if leakage is found; repetitive inspections if valve is not replaced, or if the valve is replaced with a valve having the same P/N or S/N; and an operational test), according to the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directives 2001–516(B) and 2001–517(B), both dated October 31, 2001.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32193 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–335–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Dassault Model Mystere-Falcon 50 series airplanes, that would have required repetitive tests of double-skin feeder tanks for fuel leaks, and corrective actions, if necessary. It also would have required modification of seals in the feeder tanks, which would have terminated the repetitive leak tests. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign airworthiness authority. This new action revises the proposed rule by making the proposed requirements applicable to additional airplanes. The actions specified by this new proposed AD are intended to prevent fuel leaks from the feeder tanks, which could result in fuel vapors in the cabin that could come into contact with ignition sources. The actions are intended to address the identified unsafe condition.

DATES: Comments must be received by February 6, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–335–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–335–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–335–AD.'' The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–335–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD) applicable to certain Dassault Model Mystere-Falcon 50 series airplanes was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 25, 2001 (66 FR 38585). That NPRM would have required repetitive tests of double-skin feeder tanks for fuel leaks, and corrective actions, if necessary. It also would have required modification of seals in the feeder tanks, which would have terminated the repetitive leak tests. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign airworthiness authority. That condition, if not corrected, could result in fuel leaks from the feeder tanks, which could result in fuel vapors in the cabin that could come into contact with ignition sources.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has received information that the defect of the seals on double-skin feeder tanks on frames 28, 29, and 31, which was the subject of the NPRM, may exist on additional airplanes. Though the NPRM would have applied to Model Mystere-Falcon 50 series airplanes with serial numbers 253 to 286 inclusive, 288, 290, and 291; airplanes with serial numbers 222 to 252 inclusive are also subject to the identified unsafe condition. Therefore, these airplanes also must be made subject to the repetitive tests of double-skin feeder tanks for fuel leaks, corrective actions, if necessary, and modification of seals in the feeder tanks, as proposed in the original NPRM.

Conclusion

Since the change described previously expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Comments Received in Response to the NPRM

Due consideration has been given to the following comments, which were received in response to the NPRM.

Refer to New Service Information

The commenter, the airplane manufacturer, requests that the FAA revise paragraphs (a) and (b) of the NPRM to refer to certain work cards of the Dassault Falcon 50 Maintenance Manual, Revision 7, dated August 2001. The NPRM refers to Temporary Revision No. 19 to the Dassault Falcon 50 Maintenance Manual, dated April 2000, as the appropriate source of service information for the actions in those paragraphs. The commenter states that it is preferable to refer to the work cards in Revision 7 of the maintenance manual, rather than to Temporary Revision No. 19, because the work cards more clearly identify the relevant material.

We concur that the work cards in Revision 7 of the Dassault Falcon 50 Maintenance Manual, as specified by the commenter, are a more definitive source of service information. We have revised paragraphs (a) and (b) of the supplemental NPRM accordingly.

Clarify Paragraph (c)

The commenter also asks us to revise the wording of paragraph (c) of the NPRM to include the words ''double skin.'' We concur that this change will provide clarification and, accordingly, have revised paragraph (c) of this supplemental NPRM to specify that the action described in that paragraph consists of rework of the seals of the DOUBLE-SKIN feeder tanks at frames 28 and 31.

Cost Impact

The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 8 work hours per airplane to accomplish the proposed leak tests, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed leak tests on U.S. operators is estimated to be $22,080, or $480 per airplane, per test.

The FAA estimates that it would take approximately 50 work hours per airplane to accomplish the proposed reworking of the seals in the feeder tanks, and that the average labor rate is $60 per work hour. The required parts would be provided at no charge to the operator. Based on these figures, the cost impact of the reworking of the seals on U.S. operators is estimated to be $138,000, or $3,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 2000–NM–335–AD.

Applicability: Model Mystere-Falcon 50 series airplanes, certificated in any category, serial numbers 222 to 286 inclusive, 288, 290, and 291.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leaks from the feeder tanks, which could result in fuel vapors in the cabin that could come into contact with ignition sources, accomplish the following:

Leak Testing

(a) Within 7 months after the effective date of this AD: Perform a feeder tank leak test by sampling at the drain ports of frames 29 and 31, in accordance with Work Card No. 686.3/1 of the Dassault Falcon 50 Maintenance Manual, Revision 7, dated August 2001. Repeat the leak test at intervals not to exceed 13 months, until accomplishment of paragraph (c) of this AD.

Corrective Action

(b) If the feeder tank leak test indicates that a leak is present: Prior to further flight, renew the seal, in accordance with Work Card No. 686.4/1 of the Dassault Falcon 50 Maintenance Manual, Revision 7, dated August 2001.

Modification

(c) Within 78 months since the date of manufacture of the airplane: Rework the seals of the double-skin feeder tanks at frames 28 and 31, in accordance with Dassault Service Bulletin F50–328, dated May 31, 2000. Accomplishment of the rework terminates the requirements of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–163–030(B), dated April 19, 2000.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32194 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–209–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require an inspection of the tripod strut assembly of the inboard support of the leading edge slat of the wing for a preload condition, and follow-on actions. For certain airplanes, this proposal also would require inspection and replacement of the existing tripod struts with new, adjustable struts, if necessary. This action is necessary to prevent damage to the tripod strut assembly due to a preload condition, which could result in loss of control of the inboard leading edge slat or separation of the slat from the airplane, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–209–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: John Craycraft, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2782; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–209–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The airplane manufacturer has informed the FAA that damaged bushings were found in the tripod strut assembly of the inboard support of the leading edge slat of the wings of a Model 767 series airplane in production. The damage was due to preload in the tripod assembly during installation. The tripod assembly is used to support the inboard leading edge slat and is the primary inboard-outboard load path of the slat. Loss of primary inboard-outboard load path for the slat can result in an unstable slat-to-wing connection, and separation of the slat from the airplane. Such conditions, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–57A0058, Revision 1, dated May 27, 1999, which describes procedures for a check (inspection) of the tripod strut assembly of the inboard support of the leading edge slat of the wing for a preload condition, and follow-on actions. The follow-on actions include:

• If no preload condition is found, a visual inspection of the components in the fitting assembly to determine if bushing holes are round.

• Replacement of the fitting assembly if the bushing holes are not round.

• If a preload condition is found, a high frequency eddy current inspection of the lug bore and base of the fitting assembly for cracking.

• Rework of the fitting assembly if no cracking is found, or if cracking is found in the lug bore only.

• Replacement of the fitting assembly if cracking is found in the lug base or the lug bore and base.

• Adjustment of the tripod struts, if necessary, to eliminate preload condition, and a check of the rigging of the inboard leading edge slat, and re-rigging if necessary.

• For certain airplanes, inspection for improperly cut and spliced struts, and strut replacement, if necessary.

The FAA also has reviewed and approved Boeing Service Bulletin 767–57–0037, dated January 14, 1993. For Group 2 airplanes (as defined in the service bulletin) the service bulletin describes procedures for doing a visual inspection of the tripod struts of the inboard leading edge of the wings to determine if they have been cut and spliced, and replacement with new, adjustable struts if the existing struts are cut and spliced with fewer than six hi-loks.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of certain actions specified in the service bulletins described previously, except as discussed below.

Differences Between This Proposed AD and the Service Bulletins

The service bulletins do not specify what type of visual inspection of the tripod assembly and tripod struts should be used. The FAA has determined that the procedures in the service bulletins describe a general visual inspection. Note 2 of this proposed AD defines that type of inspection.

Other differences include the following:

• Boeing Service Bulletin 767–57A0058, Revision 1, specifies doing a ''check'' for preload, however, this proposed AD uses the term ''general visual inspection.''

• The compliance time for doing the actions specified in the Boeing Service Bulletin 767–57A0058, Revision 1, is within 5,000 flight cycles or 24 months after the receipt of the service bulletin, whichever comes first. The airplane manufacturer has informed us that ''whichever comes first'' is an error in the compliance time and would put certain airplanes immediately out of compliance. The correct compliance time is ''whichever comes later,'' and this proposed AD requires that compliance time.

• The effectivity in Boeing Service Bulletin 767–57–0037 specifies line numbers 1 through 469 inclusive. The airplane manufacturer has informed us that line numbers 1 through 159 inclusive had a fixed strut which was not cut and spliced or preloaded. Line numbers 160 through 469 inclusive may have had a fixed strut which was cut and spliced, and if it was not cut and spliced it was still subject to being preloaded. Therefore, the affected line numbers are 160 through 469 inclusive, and those line numbers are included in this proposed AD.

Cost Impact

There are approximately 379 airplanes of the affected design in the worldwide fleet. The FAA estimates that 136 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspections of the tripod strut assembly and bushing holes, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $8,160, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator be required to accomplish the rework of the fitting assembly, it would take approximately 4 work hours per airplane to accomplish the proposed rework, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed rework would be $240 per airplane.

Should an operator be required to accomplish the high frequency eddy current inspection, it would take

approximately 5 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection would be $300 per airplane.

Should an operator be required to accomplish the replacement of the main strut support fitting, it would take approximately 14 work hours per airplane to accomplish the proposed replacement (on both the left and right wings of the airplane, excluding the time for gaining access and closing up), at an average labor rate of $60 per work hour.

Required parts would cost approximately $12,380 per airplane. Based on these figures, the cost impact of the proposed replacement would be $13,220 per airplane.

Should an operator be required to accomplish the inspection for improperly cut and spliced struts, it would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection of the struts proposed by this AD would be $60 per airplane.

Should an operator be required to accomplish the replacement of a cut and spliced strut with a new, adjustable tripod strut, it would take approximately 4 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the replacement proposed by this AD would be $240 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–209–AD.

Applicability: Model 767 series airplanes, line numbers 160 through 541 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the tripod strut assembly due to a preload condition, which could result in loss of control of the inboard leading edge slat or separation of the slat from the airplane, and consequent reduced controllability of the airplane, accomplish the following:

Inspections

(a) For all airplanes: Before the accumulation of 5,000 total flight cycles or within 24 months after the effective date of this AD, whichever is later: Do a general visual inspection (check) of the tripod strut assembly of the inboard leading edge slat of each wing for a preload condition, per Figure 2 of Boeing Service Bulletin 767–57A0058, Revision 1, dated May 27, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If no preload condition is found, before further flight, inspect the fitting assembly bushing holes for roundness, per Figure 5 of the Accomplishment Instructions of the service bulletin.

(i) If all the bushing holes are round, before further flight, do the inspection required by paragraph (c) of this AD.

(ii) If any bushing hole is not round, before further flight, do the inspections required by paragraphs (b) and (c) of this AD.

(2) If a preload condition is found, before further flight, do the inspections required by paragraphs (b) and (c) of this AD.

Follow-on Actions

(b) For airplanes subject to paragraph (a)(1)(ii) or (a)(2) of this AD: Do a high frequency eddy current inspection of the fitting assembly lug for cracking, per Figure 6 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0058, Revision 1, dated May 27, 1999.

(1) If no cracking is found, or if cracking is found in the lug bore only, before further flight, rework the fitting assembly lug per Figure 7 of the Accomplishment Instructions of the service bulletin.

(2) If cracking is found in the fitting lug base or the lug bore and base, before further flight, purge the auxiliary fuel tank and replace the fitting assembly lug per Figure 8 of the Accomplishment Instructions of the service bulletin.

(c) For airplanes subject to paragraph (a)(1)(i), (a)(1)(ii), or (a)(2) of this AD: Do a general visual inspection of the bushing holes of the main strut assembly to determine if the bushing holes are round, per Figure 9 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0058, Revision 1, dated May 27, 1999.

(1) If the bushing holes are round, before further flight, assemble the tripod assembly per Figure 11 or Figure 12, as applicable, of the Accomplishment Instructions of the service bulletin.

(2) If the bushing holes are not round, before further flight, replace the main strut fitting assembly per Figure 10 of the Accomplishment Instructions of the service bulletin, then assemble the tripod assembly per Figure 11 or Figure 12, as applicable, of the Accomplishment Instructions of the service bulletin.

Note 3: Inspections and follow-on actions done before the effective date of this AD per Boeing Alert Service Bulletin 767–57A0058, dated June 11, 1998, are considered acceptable for compliance with the applicable actions specified in this AD.

Inspection/Replacement of Tripod Struts

(d) For Group 2 airplanes that have not accomplished Boeing Service Bulletin 767–57–0037, dated January 14, 1993: Before further flight after doing the inspections and follow-on actions required by paragraphs (a),

(b), and (c) of this AD, do a general visual inspection of the tripod struts to determine if they have been cut and spliced, per the Accomplishment Instructions of the service bulletin.

(1) If the tripod struts have been cut and spliced with fewer than six hi-loks, before further flight, replace with new, adjustable struts, per Figure 1 of the Accomplishment Instructions of the service bulletin.

(2) If the tripod struts have not been cut and spliced, or they have been cut and spliced with six hi-loks, no further action is required by this paragraph.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32195 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–39–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–34–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747SP, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747SP, and 747SR series airplanes. This proposal would require one-time inspections for cracking in certain upper deck floor beams and follow-on actions. This action is necessary to find and fix cracking in certain upper deck floor beams. Such cracking could extend and sever floor beams adjacent to the body frame and result in rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–34–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–34–AD.'' The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of fatigue cracking on the left and right ends of the upper chord of the station (STA) 340 upper deck floor beam on several Boeing Model 747 series airplanes. Also, during fatigue tests on a Boeing 747SR test airplane, multiple cracks up to 0.3 inch long were found in both the left and right ends of the upper chord of the STA 340 floor beam. On certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747SP, and 747SR series airplanes, the STA 340 upper deck floor beam, as well as the floor beam at STA 360, are made from 7075 aluminum. Other upper deck floor beams on these models are made from 2024 aluminum, which is known to be more durable than 7075 aluminum against fatigue. Cracking of the upper deck floor beam at STA 340 or STA 360, if not corrected, could extend and sever floor beams adjacent to the body frame and result in rapid depressurization of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001, which describes procedures for one-time detailed visual and open-hole high frequency eddy current (HFEC) inspections for cracking in the upper deck floor beams at STA 340 and STA 360, and follow-on actions. The follow-on actions consist of repair of any cracking found during the inspections or, if no cracking is found, modification of the upper deck floor beams. These follow-on actions are described below:

- The repair described in the service bulletin is identified as a ''time-limited repair'' and includes removing certain fasteners and the existing strap, performing open-hole HFEC inspections of the chord and web, stop-drilling web cracks, replacing the outboard section of the web, if necessary, and installing new straps. The service bulletin specifies that the time-limited repair must be replaced with a permanent repair after a certain amount of time and that operators are to contact Boeing for instructions for such permanent repair.
- The modification described in the service bulletin involves removing the existing straps, and installing new straps. Also, the service bulletin notes that, if this modification is not accomplished immediately following the inspections described previously, the inspections must be repeated one time, immediately before the modification is accomplished.

The service bulletin also specifies accomplishment of repetitive post-repair or post-modification open-hole HFEC inspections for cracking of fastener holes common to the upper chord, reinforcement straps, and the body frame; or, alternatively, surface HFEC inspections for cracking along the lower edge of the upper chord of the floor beam at the intersection with the body frame. However, the service bulletin does not provide detailed instructions for these inspections or for repairs of any cracking that is found.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, including instructions for a permanent repair, if necessary, this proposal would require such repairs to be accomplished according to a method approved by the FAA, or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Also, while the service bulletin specifies that instructions for post-modification/repair inspections will be included in future revisions of the service bulletin, paragraph (d) of the proposed AD would require post-modification/repair inspections to be done according to a method approved by the FAA, or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Cost Impact

There are approximately 539 airplanes of the affected design in the worldwide fleet. The FAA estimates that 168 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 8 work hours per airplane to accomplish the initial inspections, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed inspections on U.S. operators is estimated to be $80,640, or $480 per airplane.

It would take approximately 24 work hours per airplane to accomplish the modification or permanent repair, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed modification or repair on U.S. operators is estimated to be $241,920 or $1,440 per airplane.

It would take approximately 8 work hours per airplane to accomplish the post-modification/repair inspections, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed post-modification/repair inspections on U.S. operators is estimated to be $80,640 or $480 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–34–AD.

Applicability: Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747SP, and 747SR series airplanes; line numbers 1 through 810 inclusive; certificated in any category; and NOT equipped with a nose cargo door.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking in certain upper deck floor beams, which could extend and sever floor beams adjacent to the body frame and result in rapid depressurization of the airplane, accomplish the following:

Inspections

(a) At the compliance time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, perform one-time detailed visual and open-hole high frequency eddy current (HFEC) inspections for cracking in the upper deck floor beams at station (STA) 340 and STA 360, according to Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001.

(1) For airplanes with 22,000 or fewer total flight cycles as of the effective date of this AD: Do the inspections prior to the accumulation of 16,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever is later.

(2) For airplanes with more than 22,000 total flight cycles as of the effective date of this AD: Do the inspections within 500 flight cycles after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Modification

(b) If no crack is found during the inspections per paragraph (a) of this AD: Within 5,000 flight cycles after the initial inspections, modify the upper deck floor beams at STA 340 and STA 360, according to Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001. If this modification is not accomplished before further flight after the inspections required by paragraph (a) of this AD, those inspections must be repeated one time, immediately before accomplishing the modification in this paragraph. If any crack is found during these repeat inspections, before further flight, accomplish paragraph (c)(2) of this AD.

Repair

(c) If any crack is found during the inspections per paragraph (a) of this AD: Before further flight, repair according to either paragraph (c)(1) or (c)(2) of this AD.

(1) Accomplish repairs according to paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Accomplish a temporary repair (including removing certain fasteners and the existing strap, performing open-hole HFEC inspections of the chord and web, stop-drilling web cracks, replacing the outboard section of the web, if applicable, and installing new straps) according to Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001; except where the service bulletin specifies to contact Boeing for appropriate action, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. AND,

(ii) Within 18 months or 1,500 flight cycles after installation of the temporary repair according to paragraph (c)(1)(i) of this AD, whichever is first, do paragraph (c)(2) of this AD.

(2) Accomplish a permanent repair according to a method approved by the Manager, Seattle ACO, or according to data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Note 3: Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001, does not contain instructions for permanent repairs.

Repetitive Inspections: Post-Modification/Repair

(d) Within 15,000 flight cycles after modification of the upper deck floor beams per paragraph (b) of this AD, or repair of the upper deck floor beams per paragraph (c) of this AD, as applicable: Perform either open-hole HFEC inspections for cracking of fastener holes common to the upper chord, reinforcement straps, and the body frame; or surface HFEC inspections for cracking along the lower edge of the upper chord of the floor beam at the intersection with the body frame; and repeat these inspections at the interval specified in paragraph (d)(1) or (d)(2) of this AD, as applicable. Perform these inspections and repair any cracking found during these inspections according to a method approved by the Manager, Seattle ACO, or according to data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For an inspection or repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(1) If the most recent inspection used the surface HFEC method: Repeat the inspection within 1,000 flight cycles.

(2) If the most recent inspection used the open-hole HFEC method: Repeat the inspection every 3,000 flight cycles.

Note 4: There is no terminating action at this time for the repetitive post-modification/repair inspections according to paragraph (d) of this AD, and instructions for these inspections are not provided in Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32196 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–205–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4 Series Airplanes; Model A300 F4–605R Airplanes; Model A300 B4–600 and A300 B4–600R Series Airplanes; and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and A300 B4 series airplanes; certain Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes; and certain Model A310 series airplanes. That earlier proposed AD would have required repetitive inspections to detect damage of the fillet seals and feeder cables, and of the wiring looms in the wing/pylon interface area; and corrective action, if necessary. That earlier proposed AD also would have provided for optional terminating action for the repetitive inspections. This new action would retain those proposed actions but require that actions be done in accordance with newly revised service bulletins. This new action also would revise the applicability. The actions specified by this new proposed AD are intended to prevent wire chafing and short circuits in the wing leading edge/pylon interface area, which could result in loss of the power supply generator and/or system functions. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 28, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–205–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket 2001–NM–205–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2001–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and A300 B4 series airplanes; certain Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes; and certain Model A310 series airplanes; was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 4, 2001 (66 FR 50588). That original NPRM would have required repetitive inspections to detect damage of the fillet seals and feeder cables, and of the wiring looms in the wing/pylon interface area; and corrective action, if necessary. The original proposed AD also would have provided for optional terminating action for the repetitive inspections. The original NPRM was prompted by reports of wire chafing and short circuits in the wing leading edge/pylon interface area. That condition, if not corrected, could result in loss of the power supply generator and/or system functions.

Since Issuance of the Original NPRM

Since the original NPRM was issued, Airbus has issued new service information that would affect the requirements proposed by that NPRM.

Explanation of Relevant Service Information

Airbus Service Bulletin A300–24–0053, Revision 05, was cited in the original NPRM as the appropriate source of service information for the inspection of the fillet seals and feeder cables for Model A300 series airplanes. Airbus has since issued Revision 06 of the service bulletin, dated September 10, 2001, which describes the basic pylon and common pylon configurations and distinguishes the procedures for repairing damaged fillet seals for the two configurations.

The original NPRM cited Airbus Service Bulletin A300–54–0095, Revision 01, as the appropriate source of service information for the optional replacement of the fillet panel assemblies on Model A300 series airplanes. Airbus has since issued Revision 02 of the service bulletin, dated September 7, 2001, to include a new kit for airplanes in the basic pylon configuration. Either Revision 01 or Revision 02 would eliminate the need for the repetitive inspections for airplanes in the common pylon configuration; only Revision 02 would eliminate the need for the repetitive inspections for airplanes in the basic pylon configuration.

The original NPRM cited Airbus Service Bulletin A300–24–6039, Revision 06, as the appropriate source of service information for the inspection and repair of the wiring looms for Model A300–600 series airplanes. Airbus has since issued Revision 07 of the service bulletin, dated August 9,

2001, which includes minor changes only.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, approved these service bulletin revisions.

Accomplishment of the actions specified in Airbus Service Bulletins A300–24–0053, Revision 06, A300–24–6001, Revision 05, A310–24–2021, Revision 06, A300–24–0083, Revision 03, A300–24–6039, Revision 07, and A310–24–2052, Revision 04, is intended to adequately address the identified unsafe condition.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Extend the Compliance Time for the Inspection

One commenter requests that the compliance time specified by the original NPRM be extended from 500 flight hours to 600 flight hours. According to the commenter, a ''600 FH ''grace period'' is compatible with the highest existing interval for an A-check.''

The FAA concurs with the request. The FAA finds it appropriate to extend the compliance time to 600 flight hours and has determined that such an extension would not adversely affect the safety of the fleet. Paragraphs (a) and (b) of this supplemental NPRM have been revised accordingly.

Requests to Cite Latest Service Bulletin Revisions

The commenters request that the original NPRM be revised to refer to the latest service bulletin revisions (described previously). Airbus Service Bulletins A300–24–0053, Revision 06, and A300–54–0095, Revision 02, have included procedures for the inspection and repair of airplanes in the basic pylon configuration. One commenter states that the earlier revisions of these service bulletins properly cover the common pylon configuration but are not suitable for the basic pylon configuration. The commenters also request that Revision 07 of Service Bulletin A300–24–6039 be cited as the primary service information for the wiring loom inspection for Model A300–600 series airplanes.

The FAA partially concurs with the requests. Although accomplishment of the actions specified by earlier service bulletin revisions may be acceptable for certain airplanes, the FAA has determined that, for simplicity, this supplemental NPRM will cite only the latest service bulletin revisions for the proposed actions specified in paragraphs (a) and (b) of this supplemental NPRM. As a result, paragraphs (a) and (b) of this supplemental NPRM have been revised, and Note 3 and Note 5 of the original NPRM have been removed (and the remaining Notes have been renumbered). However, paragraph (c) of this supplemental NPRM has been revised to specify accomplishment of the terminating action in accordance with either Revision 01 or Revision 02 of Airbus Service Bulletin A300–54–0095 for airplanes in the common pylon configuration, but would require Revision 02 for airplanes in the basic pylon configuration. Operators should note that the provisions of paragraph (d) of this supplemental NPRM would enable the FAA to approve requests for alternative methods of compliance (e.g., per an alternative service bulletin revision) if data are submitted to substantiate that such alternative methods would provide an acceptable level of safety.

Request to Disallow Credit for Repair Per Certain Service Bulletin Versions

One commenter requests that the original NPRM be revised to specifically exclude credit for repairs done in accordance with revisions prior to Revision 05 of Airbus Service Bulletin A300–24–6011 and Revision 06 of Airbus Service Bulletin A310–24–2021. Note 3 of the original NPRM would have provided this credit. Note 3 of the original NPRM refers to paragraph (a) of the original NPRM. The commenter states that earlier revisions of these service bulletins are acceptable for accomplishment of detailed visual inspections to detect damage (including erosion and tearing) and deterioration of the fillet seals and feeder cables, but not the repairs of damage on applicable affected airplanes.

The FAA partially concurs. The FAA agrees that the repair procedures described in those earlier revised service bulletins are not acceptable for the basic pylon configuration, and notes that the repair procedures have been deleted from Airbus Service Bulletins A300–24–6011, Revision 05, and A310–24–2021, Revision 06. However, as stated earlier, Note 3 and Note 5 of the original NPRM, which provided credit for prior accomplishment of the earlier service bulletin revisions, have been removed from this supplemental NPRM, but operators may request approval of an alternative method of compliance in accordance with paragraph (d) of this supplemental NPRM. No additional change is necessary in this regard.

Request to Change Inspection Type

One commenter, the manufacturer, requests that the original NPRM be revised to change the inspection type from a general visual inspection to a detailed visual inspection. According to the manufacturer, ''even if not always clearly stated in the Airbus SBs, visual inspection means detailed visual inspection and not general visual inspection.''

The FAA finds that detailed visual inspections are appropriate to address the identified unsafe condition, and concurs with the commenter's request. Paragraphs (a) and (b) of this supplemental NPRM have been revised to specify detailed, rather than general, visual inspections. In addition, Note 2 of this supplemental NPRM has been revised to define a detailed visual inspection.

Request to Revise Applicability of Proposed AD

One commenter requests that Table 1 of the original NPRM be revised to reflect the correct applicability. The original NPRM indicates that airplanes would be excluded from the applicability if either of two specified modifications had been accomplished. The commenter states that the applicability should exclude only airplanes on which both of the specified modifications have been accomplished.

The FAA concurs. The original NPRM inadvertently substituted the conjunction ''or'' for ''and'' between the modification numbers listed in Table 1. The applicability of this supplemental NPRM has been revised to exclude airplanes only if both of the specified modifications have been accomplished.

Conclusion

Since these changes expand the scope of the original NPRM, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 107 airplanes of U.S. registry would be affected by this supplemental NPRM.

It would take approximately 6 work hours per airplane to inspect the seals/cables at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $38,520, or $360 per airplane, per inspection cycle.

It would take approximately 5 work hours per airplane to inspect the wiring looms and apply the protection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $32,100, or $300 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to perform the optional terminating action, it would take approximately 5 work hours per airplane to replace the fillet panel assemblies, at an average labor rate of $60 per work hour. Required parts would cost approximately $350 to $470 per airplane. Based on these figures, the cost impact of the optional terminating action is estimated to be $650 to $770 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2001–NM–205–AD.

Applicability: The following airplanes, certificated in any category:

Model	Excluding those modified per Airbus modification
A300 B2–1C, A300 B2–203, A300 B2K–3C, and A300 B4 series	11349 and airplanes 12309.
A300 F4–605R airplanes, A300 B4–600 series airplanes, and A300 B4–600R series airplanes	11348 and 12303.
A310 series airplanes	11350 and 12310.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent wire chafing and short circuits in the wing leading edge/pylon interface area, which could result in loss of the power supply generator and/or system functions, accomplish the following:

Inspections

(a) Within 600 flight hours after the effective date of this AD, perform a detailed visual inspection to detect damage (including erosion and tearing) and deterioration of the fillet seals and feeder cables, in accordance with Airbus Service Bulletin A300–24–0053, Revision 06, dated September 10, 2001 (for Model A300 series airplanes); A300–24–6011, Revision 05, dated May 18, 2001 (for Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes); or A310–24–2021, Revision 06, dated May 18, 2001 (for Model A310 series airplanes). Repeat the inspection thereafter at intervals not to exceed 1,000 flight hours, until the actions specified by paragraph (c) are accomplished.

(1) If no damage is detected: Prior to further flight following the initial inspection only, apply protection to each feeder cable in accordance with the applicable service bulletin.

(2) If any damage is detected: Prior to further flight, repair in accordance with the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Note 3: Airbus Service Bulletins A300–24–0053, A300–24–6011, and A310–24–2021 refer to Airbus Service Bulletins A300–24–0054, A300–24–6013, and A310–24–2024, respectively, as additional sources of service information for repair.

(b) Within 600 flight hours after the effective date of this AD: Perform a detailed visual inspection of the wiring looms in the area of the wing leading edge/pylon interface to detect damage (including chafing, burning, and short circuits), in accordance with Airbus Service Bulletin A300–24–0083, Revision 03, dated January 3, 2001 (for Model A300 series airplanes); A300–24–6039, Revision 07, dated August 9, 2001 (for Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes); or A310–24–2052, Revision 04, dated April 6, 2001 (for Model A310 series airplanes); as applicable. Repeat the inspection thereafter at least every 1,000 flight hours, until the actions specified by paragraph (c) of this AD have been accomplished.

(1) If no damage is detected: Prior to further flight following the initial inspection only, apply protection in accordance with the applicable service bulletin.

(2) If any damage is detected: Prior to further flight, repair in accordance with the applicable service bulletin.

Optional Terminating Action

(c) Replacement of the fillet panel assemblies with new, improved assemblies,

as specified by paragraphs (c)(1), (c)(2), or (c)(3) of this AD, as applicable, terminates the requirements of this AD.

(1) For Model A300 series airplanes: Replacement of the fillet panel assemblies, if accomplished, must be done as specified by paragraph (c)(1)(i) or (c)(1)(ii) of this AD.

(i) For airplanes in the common pylon configuration: In accordance with Airbus Service Bulletin A300–54–0095, Revision 01, dated January 3, 2001, or Revision 02, dated September 7, 2001.

(ii) For airplanes in the basic pylon configuration: In accordance with Airbus Service Bulletin A300–54–0095, Revision 02, dated September 7, 2001.

(2) For Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes: Replacement of the fillet panel assemblies, if accomplished, must be done in accordance with Airbus Service Bulletin A300–54–6032, Revision 03, dated January 3, 2001.

(3) For Model A310 series airplanes: Replacement of the fillet panel assemblies, if accomplished, must be done in accordance with Airbus Service Bulletin A310–54–2033, Revision 01, dated January 3, 2001.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32197 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

(Docket No. RM96–1–020)

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued December 20, 2001.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend § 284.12 of its regulations governing standards for conducting business practices with interstate natural gas pipelines. The Commission is proposing to incorporate by reference the most recent version of the standards, Version 1.5, promulgated August 18, 2001 by the Gas Industry Standards Board (GISB). Version 1.5 of the GISB standards can be obtained from GISB at 1100 Louisiana, Suite 4925, Houston, TX 77002, 713–356–0060, *http://www.gisb.org.*

DATES: Comments are due February 1, 2002.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1283

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0507

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

1. The Federal Energy Regulatory Commission (Commission) proposes to amend § 284.12 of its open access regulations governing standards for conducting business practices and electronic communications with interstate natural gas pipelines. The Commission is proposing to adopt the most recent version, Version 1.5, of the consensus industry standards, promulgated by the Gas Industry Standards Board (GISB). The Commission also is proposing to remove § 284.12(a) of its regulations dealing with pipeline Electronic Bulletin Boards (EBBs), since all pipelines are required under Commission regulations to provide all electronic communications and conduct all electronic transactions using the public Internet.[1] The proposed rule is intended to benefit the public by adopting the most recent and up-to-date standards governing electronic communication that includes new shipper options such as title transfer tracking, as well as standards for imbalance netting and trading and uniform procedures for implementation of aspects of Order No. 637.[2]

2. Background

3. Since 1996, in the Order No. 587 series,[3] the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In this series of orders, the Commission incorporated by reference consensus standards developed by GISB, a private consensus standards developer composed of members from all segments of the natural gas industry. GISB is an accredited standards organization under the auspices of the American National Standards Institute (ANSI).

4. On October 19, 2001, GISB filed with the Commission a report informing the Commission that it had adopted a new version of its standards, Version 1.5. On December 3, 2001, GISB filed with the Commission a report listing errata to the Version 1.5 standards.

[1] 18 CFR 284.12(c)(3)(i)(A) (2001).

[2] Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,091 (Feb. 9, 2000).

[3] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,050 (Mar. 4, 1997), Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062 (Apr. 16, 1998), Order No. 587–H, 63 FR 39509 (July 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,063 (July 15, 1998); Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,067 (Sept. 29, 1998), Order No. 587–K, 64 FR 17276 (Apr. 9, 1999), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,072 (Apr. 2, 1999); Order No. 587–M, 65 FR 77285 (Dec. 11, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,114 (Dec. 11, 2000).

5. GISB reports that its newest version contains some of the following highlights: modifications to the data set, data element, and code value tables to support Internet web page standards and the transition of EBBs to the Internet; business practice standards and data sets governing imbalance netting and trading (although standards for electronic data interchange of the imbalance netting and trading are still in process); standards for title transfer tracking (TTT), with a recommendation from the GISB Executive Committee that these standards be implemented no earlier than eight months from publication of these standards on August 18, 2001; and standards to support the implementation of Order No. 637 (additional standards are still being considered at the subcommittee level). GISB also reports that its electronic delivery mechanism standards include modifications related to the surety assessment performed by Sandia National Laboratories on the GISB Electronic Delivery Mechanism (EDM) standards.

6. **Discussion**

7. The Commission is proposing to adopt Version 1.5 [4] of GISB's consensus standards.[5] Pipelines would be required to implement the standards three months after a final rule is issued.[6]

8. Version 1.5 of the GISB standards provides added flexibility to shippers, standardizes additional business practices, and update and improves the current standards.[7] The principal changes occur in the areas of title transfer tracking, imbalance netting and trading, and improvement of the standards for conducting business transactions electronically over the Internet. Version 1.5 incorporates a series of standards (Standards 1.3.64 through 1.3.78) providing that natural gas pipelines track title transfers at pooling points. These standards will provide shippers with greater flexibility in structuring business transactions, and will enhance the liquidity of the natural gas market by providing for accurate accounting of gas purchase and sale transactions and integrating such transactions into the pipeline scheduling process. Version 1.5 includes new standards (standards 2.3.36 through 2.3.50) for transmitting statements of allocation and implementing imbalance netting and trading as required by the Commission's regulations.[8] Version 1.5 also updates and improves the standards by modifying the electronic communication standards to better support Internet web page standards and the transition of EBBs to the Internet and by effectuating changes to accommodate the recommendations of Sandia National Laboratories. Commission adoption of these standards will keep the Commission regulations current.[9]

9. GISB approved the standards under its consensus procedures.[10] As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like GISB, as means to carry out policy objectives or activities.[11]

10. While comments are requested on all of the GISB standards, the Commission specifically requests comment on whether it should adopt revised standard 5.3.2 dealing with the timeline for capacity release transactions. The revision to standard 5.3.2 in Version 1.5 was made in response to Order No. 637 in which the Commission adopted a regulation requiring pipelines to provide scheduling equality between capacity release transactions and pipeline transportation services.[12] The regulation states:

11. Pipelines must permit shippers acquiring released capacity to submit a nomination at the earliest available nomination opportunity after the acquisition of capacity. If the pipeline requires the replacement shipper to enter into a contract, the contract must be issued within one hour after the pipeline has been notified of the release, but the requirement for contracting must not inhibit the ability of the replacement shipper to submit a nomination at the earliest available nomination opportunity.

12. GISB standards adopted by the Commission currently provide for four nomination cycles: a timely nomination at 11:30 a.m. to take effect at 9 a.m. central clock time (CCT) [13] the next gas day, an Evening nomination at 6 p.m. CCT to take effect at 9 a.m. CCT the next gas day, an Intra-Day 1 nomination at 10 a.m. CCT to take effect at 5:00 p.m. CCT on the same gas day, and an Intra-Day 2 nomination at 5 p.m. CCT to take effect at 9 p.m. CCT on the same gas day.[14] In implementing the scheduling equality requirement, the Commission held that a replacement shipper under a capacity release transaction must be able to nominate coincident with notification to the pipeline of a pre-arranged capacity release transaction or coincident with the award of capacity

[4] The incorporation includes the errata sheets published by GISB.

[5] Pursuant to the regulations regarding incorporation by reference, copies of Version 1.5 of the standards are available from GISB. 5 U.S.C. 552 (a)(1); 1 CFR 51 (2001).

[6] GISB standard 1.3.78 provides that implementation of TTT not take place until eight months after publication of the TTT standards in the GISB standards manual (which took place on August 18, 2001), and the Commission proposes to adopt that recommendation.

[7] In Version 1.5, GISB made the following changes to its standards. It added Principles 1.1.20, 1.1.21 and 2.1.5; Definitions 1.2.13 through 1.2.19, 2.2.2, 2.2.3, and 4.2.20; Standards 1.3.64 through 1.3.78, 2.3.36 through 2.3.50, 3.3.26, 4.3.86, 4.3.87, and 5.3.43; and Data Sets 2.4.7 through 2.4.16. It revised Standards 1.3.2, 1.3.54, 1.3.61, 1.3.63, 2.3.30, 2.3.32, 2.3.34, 4.3.16, 4.3.23, 4.3.35, 5.3.2, 5.3.22, 5.3.24, 5.3.31, 5.3.32, and 5.3.33, and Data Sets 1.4.1 through 1.4.7, 2.4.1, 2.4.3 through 2.4.6, 3.4.1, 3.4.2, 3.4.4, 5.4.1 through 5.4.10, 5.4.12, 5.4.13, and 5.4.16 through 5.4.19. It deleted Principles 4.1.5 and 4.1.8, and Standard 4.3.77.

[8] 18 CFR 284.12 (c)(2)(ii) (2001).

[9] The Commission also is continuing its previous practice by proposing to exclude standards 2.3.29 dealing with operational balancing agreements (OBAs), 2.3.30 dealing with netting and trading of imbalances, and 4.3.4 dealing with retention of electronic data. The Commission has issued its own regulations in these areas (18 CFR 284.12(c)(2)(i) (OBAs), (c)(2)(ii) (netting and trading of imbalances), and (c)(3)(v) (record retention)), so that incorporation of the GISB standards is unnecessary and may cause confusion as to the applicable Commission requirements.

[10] This process first requires a super-majority vote of 17 out of 25 members of GISB's Executive Committee with support from at least two members from each of the five industry segments—interstate pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of GISB's general membership must ratify the standards.

[11] Pub. L. No. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[12] 18 CFR 284.12 (c)(1)(ii) (2001); Order No. 637, 65 FR at 10191, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,091, at 31,297.

[13] CCT refers to Central Clock Time, which includes an adjustment for day light savings time. See 18 CFR 284.12(b)(1)(i), Nominations Related Standards 1.3.1 (2001). Under the GISB standards, a gas day runs from 9 a.m. central clock time (CCT) on Day 1 to 9 a.m. CCT the next day (Day 2). 18 CFR 284.12(b)(1)(i), Nominations Related Standards 1.3.1 (2001).

[14] 18 CFR 284.12(b)(1)(i) (2001), Nominations Related Standard 1.3.2 (2001).

subject to the Commission's bidding requirements.[15]

13. With respect to pre-arranged capacity release transactions not subject to bidding, the Commission found that releasing shippers should be able to inform the pipeline of such prearranged deals at any of the four nomination opportunities and the replacement shipper should be able to submit a nomination at the time the pipeline is informed of the release. For example, if the pipeline is informed of a capacity release transaction at the 6 p.m. CCT timely nomination timeline, the replacement shipper should be permitted to submit an evening nomination for the next gas day at 6 p.m.[16]

14. With respect to capacity release transactions subject to bidding, the Commission found that shippers should be able to nominate coincident with the award of capacity. For example, under the existing Version 1.4 of the GISB standards, award notification for short-term biddable capacity release transactions is made at 5 p.m.[17] The Commission found that replacement shippers should be permitted to submit a nomination at the 5 p.m. Intra-Day 2 cycle for that capacity award.[18]

15. In Version 1.5, GISB made a number of changes to its timeline for capacity release transactions (standard 5.3.2). It reconfigured its timeline for short-term biddable releases (less than one year) so that posting of bidding will begin at 12 p.m. on a business day with the award of capacity made by 3:00 p.m.[19] The standard then provides that ''contract issued within one hour of award posting (with a new contract number, when applicable); nomination possible beginning at the next available nomination cycle for the effective date of the contract. (Central Clock Time).'' Thus, under the reconfigured timeline a shipper awarded capacity at 3 p.m. can make a nomination at the next available nomination cycle (the 5 p.m. Intra-Day 2 Nomination cycle). This appears to be the same result obtained under the Commission's implementation of Order No. 637.

16. However, with respect to non-biddable pre-arranged capacity release transactions not subject to bidding, the GISB Version 1.5 standard differs from the implementation process established by the Commission. Under the GISB standard, shippers must notify the pipeline of a pre-arranged capacity release transaction one-hour prior to the nomination deadline. For example, the standard for the Timely Nomination states: ''posting of prearranged deals not subject to bid are due by 10:30 A.M. on a Business Day; contract issued within one hour of award posting (with a new contract number, when applicable); nomination possible beginning at the next available nomination cycle for the effective date of the contract. (Central Clock Time).'' The requirement for one-hour prior notice is not consistent with the Commission's implementation of Order No. 637 in which the Commission required pipelines to permit notice coincident with the nomination deadline (*e.g.,* 11:30 a.m. notice for an 11:30 a.m. nomination).

17. The Commission requests comment on whether it should adopt the one-hour prior notice requirement in GISB standard 5.3.2. Comments should discuss the benefits or detriments of adopting the one-hour prior notice requirement notwithstanding that pipelines already are required to implement scheduling equality without such prior notice.

18. In addition, the Commission is proposing to eliminate existing § 284.12(a) dealing with Electronic Bulletin Boards (EBBs) to clean up its regulations. In 1998, in Order No. 587–G, the Commission required pipelines to provide all electronic information and to conduct electronic transactions using the public Internet.[20] At that time, the Commission retained its regulations governing EBBs to provide for a transition period as pipelines began the process of converting from EBBs to Internet communication. At this time, the transition to Internet communication should be complete and continuation of regulations regarding EBB communication, therefore, no longer appears necessary.[21]

19. **Notice of Use of Voluntary Consensus Standards**

20. Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that Federal Agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation containing a standard identifying whether a voluntary consensus standard or a government-unique standard is being proposed. In this NOPR, the Commission is proposing to incorporate by reference Version 1.5 (August 18, 2001) of the voluntary consensus standards developed by GISB.

21. **Information Collection Statement**

22. The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimates include the costs for implementing GISB's Version 1.5 standards which incorporate the most recent and up-to-date standards governing electronic communication including new shipper options such as title transfer tracking, as well as standards for imbalance netting and trading and uniform procedures for implementation of aspects of Order No. 637. The burden estimates are primarily related to start-up for implementing the latest version of the standards and will not be on-going costs.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–545	93	1	38	3,534

[15] Colorado Interstate Gas Company, 95 FERC ¶ 61,321, at 62,111–12 (2001), 97 FERC ¶ 61,011 (2001). *See, e.g.,* Kinder Morgan Interstate Gas Transmission, LLC, 97 FERC ¶ 61,062 (2001); MIGC, Inc, 97 FERC ¶ 61,042 (2001); National Fuel Gas Supply Corporation, 96 FERC ¶ 61,182, at 61,804–805 (2001); Paiute Pipeline Company, 96 FERC ¶ 61,167, at 61,748–49 (2001); Transcontinental Gas Pipe Line Corporation, 96 FERC ¶ 61, 352, at 62,323 (2001); Trailblazer Pipeline Company, 97 FERC ¶ 61,056 (2001).

[16] Colorado Interstate Gas Company, 95 FERC ¶ 61,321, at 62,111–12 (2001).

[17] 18 CFR 284.12(b)(1)(v) (2001), Capacity Release Related Standard 5.3.2 (2001).

[18] Colorado Interstate Gas Company, 95 FERC ¶ 61,321, at 62,111–12 (2001).

[19] Biddable releases of one year or more have a three day bidding period.

[20] 18 CFR 284.12(c)(3)(i)(A) (2001).

[21] Current §§ 284.12(c)(3)(ii) and (v) contain similar posting requirements for Internet communication as existing § 284.12(a) does for EBBs, so retention of § 284.12(a) would be duplicative and unnecessary.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–549C	93	1	4,526	420,918

Total annual Hours for Collection
(Reporting and Recordkeeping, (if appropriate) = 424,452

23. Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be the following:

	FERC–545	FERC–549C
Annualized Capital/Startup Costs	$198,857	$23,684,934
Annualized Costs (Operations & Maintenance)	0	0
Total Annualized Costs	198,857	23,684,934

24. OMB regulations [22] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal); FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines.

Action: Proposed collections.

OMB Control No.: 1902–0154, 1902–0174.

Respondents: Business or other for profit, (Interstate natural gas pipelines (Not applicable to small business.))

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

25. *Necessity of Information:* This proposed rule, if implemented, would upgrade the Commission's current business practice and communication standards to the latest edition approved by GISB (Version 1.5). These standards include new shipper options such as title transfer tracking, as well as standards for imbalance netting and trading and uniform procedures for implementation of aspects of Order No. 637. The implementation of these standards are necessary to increase the efficiency of the pipeline grid.

26. The information collection requirements of this proposed rule will be reported directly to the industry users. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act to monitor activities of the natural gas industry to ensure its competitiveness and to assure the improved efficiency of the industry's operations. The Commission's Office of Markets, Tariffs and Rates will use the data in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

27. *Internal Review:* The Commission has reviewed the requirements pertaining to business practices and electronic communication with natural gas interstate pipelines and made a determination that the proposed revisions are necessary to establish a more efficient and integrated pipeline grid. Requiring such information ensures both a common means of communication and common business practices which provide participants engaged in transactions with interstate pipelines with timely information and uniform business procedures across multiple pipelines. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

28. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425 email: michael.miller@ferc.fed.us].

29. Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7318, fax: (202) 395–7285].

30. **Environmental Analysis**

31. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[23] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[24] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[25] Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

32. **Regulatory Flexibility Act Certification**

33. The Regulatory Flexibility Act of 1980 (RFA) [26] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations proposed here impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

34. **Comment Procedures**

35. The Commission invites interested persons to submit written comments on the matters and issues proposed in this

[22] 5 CFR 1320.11.

[23] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[24] 18 CFR 380.4.

[25] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[26] 5 U.S.C. 601–612.

notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due February 1, 2002. Comments may be filed either in paper format or electronically. Those filing electronically do not need to make a paper filing.

36. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. RM96–1–020.

37. Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Website at *www.ferc.gov* and click on ''Make An E-Filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us.* Comments should not be submitted to the e-mail address.

38. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by e-mail to *rimsmaster@ferc.fed.us.*

39. **Document Availability**

40. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's homepage *(http://www.ferc.gov)* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

41. From FERC's homepage on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

42. CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

43. CIPS can be accessed using the CIPS link or the Documents & Filing link. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

44. RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's homepage using the RIMS link or the Documents & Filing link. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

45. User assistance is available for RIMS, CIPS, and the Web site during normal business hours from our Help line at (202) 208–2222 (e-mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (e-mail to *public.referenceroom@ferc.fed.us*).

46. During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Web site are available. User assistance is also available.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission proposes to amend part 284, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. Section 284.12 is amended as follows:

§ 284.12 [Amended]

a. Paragraph (a) is removed and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively.

b. In newly redesignated paragraphs (a)(1)(i), (ii), (iii), and (v), revise all references to ''Version 1.4, August 31, 1999'' to read ''Version 1.5, August 18, 2001.''

c. In newly redesignated paragraph (a)(1)(iv), revise all references to ''Version 1.4, November 15, 1999'' to read ''Version 1.5, August 18, 2001.''

[FR Doc. 01–32004 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142299–01] [REG–209135–88]

RIN 1545–BA36 and 1545–AW92

Certain Transfers of Property to Regulated Investment Companies and Real Estate Investment Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations that apply to certain transactions or events that result in a Regulated Investment Company [RIC] or Real Estate Investment Trust [REIT] owning property that has a basis determined by reference to a C corporation's basis in the property. The text of the temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** serves as the text of this proposed regulation.

DATES: Written or electronic comments must be received by April 2, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU [REG–142299–01], room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU [REG–142299–01], Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC or sent to the IRS Internet site at: *http://www.irs.gov/taxregs/reglist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Lisa A. Fuller, (202) 622–7750; concerning submissions of comments, Donna Poindexter (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44

U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224. Comments on the collection of information should be received by March 4, 2002. Comments are specifically requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the collection will have practical utility; The accuracy of the estimated burden associated with the proposed collection of information (see below); How the quality, utility, and clarity of the information to be collected may be enhanced; How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §§ 1.337(d)–6T and 1.337(d)–7T. This information is necessary for the IRS to determine whether section 1374 treatment or deemed sale treatment is appropriate for the entity for which the regulation applies. The collection of information is required to obtain a benefit, i.e., to elect section 1374 treatment in lieu of deemed sale treatment in § 1.337(d)–6T, or to elect deemed sale treatment in lieu of section 1374 treatment in § 1.337(d)–7T. The likely respondents for deemed sale elections are C corporations. The likely respondents for section 1374 elections are RICs and REITs.

Section 1.337(d)–6T provides that a section 1374 election is made by filing a statement and attaching it to any Federal income tax return filed by the RIC or REIT on or before March 15, 2003, provided that the RIC or REIT has reported consistently with such election for all periods. Alternatively, a RIC or REIT can also make a section 1374 election by informing the IRS prior to January 2, 2002 of its intent to make a section 1374 election. Section 1.337(d)–7T provides that a deemed sale election is made by filing a statement and attaching it to the C corporation's Federal income tax return for the taxable year in which the deemed sale occurs.

Estimated total annual reporting burden: 70 hours.

Estimated average annual burden per respondent: 30 minutes.

Estimated number of respondents: 140.

Estimated annual frequency of responses: Once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** revise and add the Income Tax Regulations (26 CFR part 1) relating to section 337(d). The temporary regulations generally provide that, if property owned by a C corporation or property subject to section 1374 owned by a RIC, a REIT, or an S corporation becomes the property of a RIC or REIT by (1) the qualification of the C corporation as a RIC or REIT, or (2) certain transfers of property to a RIC or REIT, then the RIC or REIT will be subject either to section 1374 treatment or the C corporation will be subject to deemed sale treatment. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be made available for public inspection and copying. A public hearing may be scheduled. When a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Lisa A. Fuller of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Par. 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.337(d)–6 also issued under 26 U.S.C. 337.

Section 1.337(d)–7 also issued under 26 U.S.C. 337. * * *

Par. 2. Sections 1.337(d)–6 and 1.337(d)–7 are added to read as follows:

§ 1.337(d)–6 New transitional rules imposing tax on property owned by a C corporation that becomes property of a RIC or REIT.

[The text of proposed § 1.337(d)–6 is the same as the text of § 1.337(d)–6T published elsewhere in this issue of the **Federal Register**.]

§ 1.337(d)–7 Tax on property owned by a C corporation that becomes property of a RIC or REIT.

[The text of proposed § 1.337(d)–7 is the same as the text of § 1.337(d)–7T published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 01–31968 Filed 12–31–01; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 252–312b; FRL–7118–2]

Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District (MDAQMD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Mojave Desert Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) emissions from cement kilns. We are proposing to approve the local rule to regulate these emission sources under the Clean Air Act as amended in 1990.

DATES: Any comments on this proposal must arrive by February 1, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812. Mojave Desert AQMD, 14306 Park Avenue, Victorville, CA 92392–2310

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: This proposal addresses the local rule: MDAQMD Rule 1161. In the Rules and Regulations section of this **Federal Register,** we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: November 29, 2001.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 01–32100 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 67, No. 1
Wednesday, January 2, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

[Docket No. FGIS–2001–003a]

RIN 0580–AA79

Fees for Official Inspection and Official Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to increase certain fees by approximately 4.6 percent; i.e., contract and noncontract hourly rates, certain unit rates, and the administrative tonnage fee increases. These fees apply only to official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. These increases are needed to cover increased operational costs resulting from the approximate 4.6 percent anticipated January 2002 Federal pay increase. GIPSA anticipates the increase in the user fees will generate approximately $703,000 in additional revenue.

DATES: February 1, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Written comments must be submitted to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW, Room 1647–S, Washington, DC 20250–3604, or faxed to (202) 690–2755. Comments may also be sent by e-mail to: *comments@gipsadc.gov.* Please state that your comments refer to Docket No. FGIS 2001–003a. Comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: David Orr, Director, Field Management Division, at his e-mail address: *Dorr@gipsadc.usda.gov,* or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION: Executive Order 12866, Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Retained earnings balances are adjusted to reflect prior year revenue and obligations realized in the year reported. In FY 1999, GIPSA's operating costs were $23,176,643 with revenue of $22,971,204, resulting in a negative margin of $205,440. In FY 2000, GIPSA's operating costs were $24,146,428 with revenue of $23,150,188 that resulted in a negative margin of $996,240 and a negative reserve balance of $938,147. Using the most recent data available, GIPSA's FY 2001 operating costs were $25,670,126 with revenue of $23,977,240 that resulted in a negative margin of $1,692,886. The current reserve negative balance of $2,572,080 is well below the desired 3-month reserve of approximately $6 million.

Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The anticipated general and locality salary increase that averages 4.6 percent for GIPSA employees, effective January 2002, will increase GIPSA's costs by approximately $703,000.

GIPSA has reviewed the financial position of the inspection and weighing program based on the anticipated increased salary and benefit costs along with the projected FY 2002 workload of 77 million metric tons. Based on the review, GIPSA has concluded that an approximate 4.6 percent increase will have to be recovered through increases in fees.

The proposed fee increase primarily applies to entities engaged in the export of grain. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA on a fee basis at 32 export facilities. All of these facilities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities established by the Small Business Administration.

Some entities that request nonmandatory official inspection and weighing services at other than export locations could be considered small entities. The impact on these small businesses is similar to any other business; that is, an average 4.6 percent increase in the cost of official inspection and weighing services. This proposed increase should not significantly affect any business requesting official inspection and weighing services. Furthermore, any of these small businesses that wish to avoid the fee increase may elect to do so by using an alternative source for inspection and weighing services. Such a decision should not prevent the business from marketing its products.

There would be no additional reporting or recordkeeping requirements imposed by this action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in Part 800 have been previously approved by the Office of Management and Budget under control number 0580–0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this proposed rule.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning

the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this proposed rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Proposed Action

The USGSA (7 U.S.C. 71 *et seq.*) authorizes GIPSA to provide official grain inspection and weighing services and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs. The current USGSA fees were published in the **Federal Register** on July 9, 2001 (66 FR 35751), and became effective on August 8, 2001.

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Retained earnings balances are adjusted to reflect prior year revenue and obligations realized in the year reported. In FY 1999, GIPSA's operating costs were $23,176,643 with revenue of $22,971,204, resulting in a negative margin of $205,440. In FY 2000, GIPSA's operating costs were $24,146,428 with revenue of $23,150,188 that resulted in a negative margin of $996,240 and a negative reserve balance of $938,147. Using the most recent data available, GIPSA's FY 2001 operating costs were $25,670,126 with revenue of $23,977,240 that resulted in a negative margin of $1,692,886. The current reserve negative balance of $2,572,080 is well below the desired 3-month reserve of approximately $6 million. Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The salary increase that GIPSA anticipates becoming effective in January 2002 averages 4.6 percent for GIPSA employees. Overall, program costs are estimated to increase by approximately $703,000. GIPSA has reviewed the financial position of the inspection and weighing program based on the anticipated increased salary and benefit costs, along with the projected FY 2002 workload of 77 million metric tons. Based on the review, GIPSA has concluded that an approximate 4.6 percent increase will have to be recovered through increases in fees.

The current hourly fees are:

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime	Holidays
1-year contract	$27.40	$29.80	$38.60	$46.40
6-month contract	30.20	32.00	41.00	53.00
3-month contract	34.40	35.60	44.60	55.40
Noncontract	40.00	42.00	51.00	62.60

GIPSA has also identified certain unit fees, for services not performed at an applicant's facility, that contain direct labor costs and would require a fee increase. Further, GIPSA has identified those costs associated with salaries and benefits that are covered by the administrative metric tonnage fee. The anticipated 4.6 percent cost-of-living increase to salaries and benefits covered by the administrative tonnage fee results in an overall increase of an average of 4.6 percent to the administrative tonnage fee. Accordingly, GIPSA is proposing an approximate 4.6 percent increase to certain hourly rates, certain unit rates, and the administrative tonnage fee in 7 CFR 800.71, Table 1-Fees for Official Services Performed at an Applicant's Facility in an Onsite FGIS Laboratory; Table 2-Services Performed at Other Than an Applicant's Facility in an FGIS Laboratory; and Table 3, Miscellaneous Services.

This proposed rule provides a 30-day period for interested persons to comment. This comment period is deemed appropriate because grain export volume and associated requests for official services for such grain are projected to further decrease in the coming months due to seasonal and other adjustments. Accordingly, given the current level of the operating reserve, it would be necessary to implement any fee increase that may result from this rulemaking as soon as possible.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain.

For the reasons set out in the preamble, 7 CFR part 800 is proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.71 is amended by revising Schedule A in paragraph (a) to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime [2]	Holidays
(1) Inspection and Weighing Services Hourly Rates (per service representative)				
1-year contract	$28.60	$31.20	$40.40	$48.60
6-month contract	31.60	33.40	42.80	56.00
3-month contract	36.00	37.20	46.60	58.00

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]—Continued

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime [2]	Holidays
Noncontract	41.80	44.00	53.40	65.40
(2) Additional Tests (cost per test, assessed in addition to the hourly rate) [3]				
(i) Aflatoxin (other than Thin Layer Chromatography)	$8.50			
(ii) Aflatoxin (Thin Layer Chromatography method)	20.00			
(iii) Corn oil, protein, and starch (one or any combination)	1.50			
(iv) Soybean protein and oil (one or both)	1.50			
(v) Wheat protein (per test)	1.50			
(vi) Sunflower oil (per test)	1.50			
(vii) Vomitoxin (qualitative)	12.50			
(viii) Vomitoxin (quantitative)	18.50			
(ix) Waxy corn (per test)	1.50			
(x) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.				
(xi) Other services				
(a) Class Y Weighing (per carrier)				
(1) Truck/container	.30			
(2) Railcar	1.25			
(3) Barge	2.50			
(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier)				
(i) All outbound carriers (per-metric-ton) [4]				
(a) 1–1,000,000	$0.1152			
(b) 1,000,001–1,500,000	0.1051			
(c) 1,500,001–2,000,000	0.0568			
(d) 2,000,001–5,000,000	0.0420			
(e) 5,000,001–7,000,000	0.0230			
(f) 7,000,001 +	0.0105			

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and reinspection services will be assessed the same fee as the original inspection service.

[4] The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1 2]

(1) Original Inspection and Weighing (Class X) Services	
(i) Sampling only (use hourly rates from Table 1)	
(ii) Stationary lots (sampling, grade/factor, & checkloading)	
(a) Truck/trailer/container (per carrier)	$19.25
(b) Railcar (per carrier)	28.90
(c) Barge (per carrier)	185.00
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	9.95
(b) Railcar (per carrier)	19.25
(c) Barge (per carrier)	110.00
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iv) Other services	
(a) Submitted sample (per sample—grade and factor)	11.50
(b) Warehouseman inspection (per sample)	19.50
(c) Factor only (per factor—maximum 2 factors)	5.15
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.02
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	12.80
(f) Class X Weighing (per hour per service representative)	55.00
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test—other than TLC method)	29.00
(b) Aflatoxin (per test—TLC method)	110.00
(c) Corn oil, protein, and starch (one or any combination)	8.80
(d) Soybean protein and oil (one or both)	8.80
(e) Wheat protein (per test)	8.80
(f) Sunflower oil (per test)	8.80
(g) Vomitoxin (qualitative)	30.50
(h) Vomitoxin (quantitative)	37.50
(i) Waxy corn (per test)	10.00

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1] [2]—Continued

(j) Canola (per test—00 dip test)	10.00
(k) Pesticide Residue Testing [3]	
(1) Routine Compounds (per sample)	210.00
(2) Special Compounds (per service representative)	110.00
(l) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(2) Appeal inspection and review of weighing service.[4]	
(i) Board Appeals and Appeals (grade and factor)	79.50
(a) Factor only (per factor—max 2 factors)	41.80
(b) Sampling service for Appeals additional (hourly rates from Table 1)	
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC)	29.50
(b) Aflatoxin (TLC)	118.00
(c) Corn oil, protein, and starch (one or any combination)	16.80
(d) Soybean protein and oil (one or both)	16.80
(e) Wheat protein (per test)	16.80
(f) Sunflower oil (per test)	16.80
(g) Vomitoxin (per test—qualitative)	40.00
(h) Vomitoxin (per test—quantitative)	45.00
(i) Vomitoxin (per test—HPLC Board Appeal)	136.00
(j) Pesticide Residue Testing [3]	
(1) Routine Compounds (per sample)	210.00
(2) Special Compounds (per service representative)	110.00
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1	
(iii) Review of weighing (per hour per service representative)	79.20
(3) Stowage examination (service-on-request) [3]	
(i) Ship (per stowage space) (Minimum $255.00 per ship)	51.00
(ii) Subsequent ship examinations (same as original) (Minimum $153.00 per ship)	
(iii) Barge (per examination)	41.00
(iv) All other carriers (per examination)	16.00

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72(b).

[3] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

[4] If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of $2.50 per sample by the Service.

TABLE 3.—MISCELLANEOUS SERVICES[1]

(1) Grain grading seminars (per hour per service representative) [2]	$55.00
(2) Certification of diverter-type mechanical samplers (per hour per service representative) [2]	55.00
(3) Special weighing services (per hour per service representative) [2]	
(i) Scale testing and certification	55.00
(ii) Evaluation of weighing and material handling systems	55.00
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	55.00
(iv) NTEP Prototype evaluation of Railroad Track Scales	55.00 110.00 (plus usage fee per day for test car)
(v) Mass standards calibration and reverification	55.00
(vi) Special projects	55.00
(4) Foreign travel (per day per service representative)	490.00
(5) Online customized data EGIS service	
(i) One data file per week for 1 year	500.00
(ii) One data file per month for 1 year	300.00
(6) Samples provided to interested parties (per sample)	2.60
(7) Divided-lot certificates (per certificate)	1.50
(8) Extra copies of certificates (per certificate)	1.50
(9) Faxing (per page)	1.50
(10) Special mailing (actual cost)	
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1)	

[1] Any requested service that is not listed will be performed at $55.00 per hour.

[2] Regular business hours-Monday through Friday-service provided at other than regular hours charged at the applicable overtime hourly rate.

Dated: December 26, 2001.

John Pitchford,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 01–32154 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–EN–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–07–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 airplanes. This proposed AD would require you to replace the metered connector and oxygen tubing and related components in the rear seat bench. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to correct for insufficient oxygen quantity available to occupants of the rear seat bench in some emergency conditions, which could result in reduced occupant safety at the rear bench seat location.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before February 19, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–07–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2001–CE–07–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that, because of a design problem, the flow of oxygen to each occupant on the rear seat bench is insufficient. The current configuration uses two-metered connectors, which restricts the flow of oxygen.

What are the consequences if the condition is not corrected? If not corrected, insufficient oxygen quantity available to occupants of the rear seat bench in some emergency conditions could occur which could result in reduced occupant safety at the rear bench seat location.

Is there service information that applies to this subject? Pilatus has issued Pilatus PC–12 Service Bulletin No: 35–002, dated December 19, 2000.

What are the provisions of this service information? The service bulletin includes procedures for replacing the two-metered connector and oxygen tubing with a system that incorporates a single-metered connector. This includes replacements in the following areas:

—The tubing assembly—oxygen (with coupling);

—Assembly—bracket and grommet; and

—Clamp-hose.

What action did the FOCA take? The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB 2001–001, dated December 28, 2000, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in Switzerland and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What has FAA decided? The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Pilatus Model PC–12 and PC–12/45 airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 5 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed replacements:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours at $60 per hour = $120	$0. Pilatus will provide free parts	$120 per airplane	$600

Compliance Time of this Proposed AD

What would be the compliance time of this proposed AD? The compliance time of this proposed AD is within the next 30 calendar days after the effective date of this AD.

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? The oxygen flow on the rear bench seat is reduced through two metered connectors when only one reduction is necessary. Because these parts of poor design could have been installed in the field or at the factory, the problem has the same chance of occurring on an airplane with 50 hours TIS as one with 1,000 hours TIS. Therefore, we believe that 30 calendar days will:

—Ensure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and

—Not inadvertently ground any of the affected airplanes.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft LTD.: Docket No. 2001–CE–07–AD

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers with rear bench seats (part number 525.22.12.016) installed, that are certificated in any category:

Model	Serial numbers
All PC–12 and PC–12/45.	From 101 through 365

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct for insufficient oxygen quantity available to occupants of the rear seat bench in some emergency conditions, which could result in reduced occupant safety at the rear bench seat location.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Replace the tubing assembly—oxygen (with coupling) (P/N 957.10.25.231), assembly—bracket and grommet (P/N Service 525.22.12.044), and clamp—hose (946.33.21.301), or FAA-approved equivalent parts in the rear bench seat (part number (P/N) 525.22.12.016) with a new tubing assembly—oxygen (with coupling) (P/N 957.10.25.232), assembly—bracket and grommet (P/N 525.22.12.049), and clamp—hose (P/N 946.33.21.302), or FAA-approved equivalent part.	Within the next 30 days after the effective date of this AD.	Follow the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus Aircraft Ltd. PC–12 Service Bulletin, 35–002, dated December 19, 2000
(2) Do not install any rear bench seat (P/N 525.22.12.016), or any FAA-approved equivalent part unless installed with tubing assembly—oxygen (with coupling) (P/N 957.10.25.232), assembly—bracket and grommet (P/N 525.22.12.049), clamp—hose (946.33.21.302), or FAA-approved equivalent parts.	As of the effective date of this AD	Not Applicable
(3) Do not install tubing assembly—oxygen (with coupling) (P/N 957.10.25.231), assembly—bracket and grommet (P/N 525.22.12.044), clamp—hose (946.33.21.301), or FAA-approved equivalent parts.	As of the effective date of this AD	Not Applicable

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Swiss AD HB 2001–001, dated December 28, 2000.

Issued in Kansas City, Missouri, on December 21, 2001.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32151 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–350–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes. This proposal would require a one-time inspection of the hydraulically operated valve of the parking brake of the main landing gear to identify the part and serial numbers, and follow-on actions, if necessary. This action is necessary to prevent leakage of the valve, which could result in failure of the ''blue'' hydraulic system and consequent failure of alternate parking brake and emergency braking systems. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 1, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–350–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–350–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–350–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–350–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus

Model A330 and A340 series airplanes. The DGAC advises that leakage of the hydraulically operated valve of the parking brake of the main landing gear has been identified on certain Model A320 series airplanes. Hydraulic fluid leakage was found at the hydraulic connections and the vent hole of the valve. Leakage of the hydraulically operated valve, if not corrected, could result in failure of the ''blue'' hydraulic system and consequent failure of alternate parking brake and emergency braking systems.

Certain valves having serial numbers marked with a ''V'' or ''VF+E'' were modified and are not subject to the unsafe condition addressed by this AD.

Similar Model

The same hydraulically operated valve is installed on Model A330 and A340 series airplanes. Therefore, those airplanes are also subject to the unsafe condition identified by this proposed AD.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A330–32A3139 and A340–32A4176, both including Appendix 01, both dated September 14, 2001. The service bulletins describe procedures for a one-time detailed visual inspection of the hydraulically operated valve of the parking brake of the main landing gear to identify the part and serial numbers, and follow-on actions, if necessary. The follow-on actions consist of a visual inspection for hydraulic fluid leakage at the valve; repair or replacement of the valve with a new or serviceable valve if leakage is found, or repeat inspections if valve is not replaced, or if the valve is replaced with a valve having the same part or serial number; and an operational test following repair or replacement of the valve. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC issued French airworthiness directives 2001–516(B) and 2001–517(B), both dated October 31, 2001, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between this AD and the Service Bulletins

Although the service bulletins specify that the manufacturer may be contacted for disposition of certain repairs, this AD would require such repairs to be accomplished per a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this AD.

Cost Impact

The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,080, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2001–NM–350–AD.

Applicability: Model A330 and A340 series airplanes, as listed in Airbus Service Bulletin A330–32A3139 or A340–32A4176, both dated September 14, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of the hydraulically operated valve of the parking brake of the main landing gear, which could result in failure of the ''blue'' hydraulic system and consequent failure of alternate parking brake and emergency braking systems, accomplish the following:

Inspections/Follow-On Actions

(a) Within 7 days after the effective date of this AD: Do a one-time detailed visual inspection to determine the part number (P/N) and serial number (S/N) of the hydraulically operated valve of the parking brake of the main landing gear per Airbus Service Bulletin A330–32A3139 (for Model A330 series airplanes) or A340–32A4176 (for Model A340 series airplanes), both including Appendix 01, both dated September 14, 2001, as applicable.

(1) If no P/N or S/N is identified as affected equipment per the applicable service bulletin, no further action is required by this AD.

(2) If any P/N or S/N is identified as affected equipment per the applicable service bulletin: Before further flight, perform the follow-on actions (which may include a visual inspection for hydraulic fluid leakage at the valve; repair or replacement of the valve with a new or serviceable valve if leakage is found; repetitive inspections if valve is not replaced, or if the valve is replaced with a valve having the same P/N or S/N; and an operational test), according to the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directives 2001–516(B) and 2001–517(B), both dated October 31, 2001.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32193 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–335–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Dassault Model Mystere-Falcon 50 series airplanes, that would have required repetitive tests of double-skin feeder tanks for fuel leaks, and corrective actions, if necessary. It also would have required modification of seals in the feeder tanks, which would have terminated the repetitive leak tests. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign airworthiness authority. This new action revises the proposed rule by making the proposed requirements applicable to additional airplanes. The actions specified by this new proposed AD are intended to prevent fuel leaks from the feeder tanks, which could result in fuel vapors in the cabin that could come into contact with ignition sources. The actions are intended to address the identified unsafe condition.

DATES: Comments must be received by February 6, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–335–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–335–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–335–AD.'' The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–335–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD) applicable to certain Dassault Model Mystere-Falcon 50 series airplanes was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 25, 2001 (66 FR 38585). That NPRM would have required repetitive tests of double-skin feeder tanks for fuel leaks, and corrective actions, if necessary. It also would have required modification of seals in the feeder tanks, which would have terminated the repetitive leak tests. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign airworthiness authority. That condition, if not corrected, could result in fuel leaks from the feeder tanks, which could result in fuel vapors in the cabin that could come into contact with ignition sources.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has received information that the defect of the seals on double-skin feeder tanks on frames 28, 29, and 31, which was the subject of the NPRM, may exist on additional airplanes. Though the NPRM would have applied to Model Mystere-Falcon 50 series airplanes with serial numbers 253 to 286 inclusive, 288, 290, and 291; airplanes with serial numbers 222 to 252 inclusive are also subject to the identified unsafe condition. Therefore, these airplanes also must be made subject to the repetitive tests of double-skin feeder tanks for fuel leaks, corrective actions, if necessary, and modification of seals in the feeder tanks, as proposed in the original NPRM.

Conclusion

Since the change described previously expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Comments Received in Response to the NPRM

Due consideration has been given to the following comments, which were received in response to the NPRM.

Refer to New Service Information

The commenter, the airplane manufacturer, requests that the FAA revise paragraphs (a) and (b) of the NPRM to refer to certain work cards of the Dassault Falcon 50 Maintenance Manual, Revision 7, dated August 2001. The NPRM refers to Temporary Revision No. 19 to the Dassault Falcon 50 Maintenance Manual, dated April 2000, as the appropriate source of service information for the actions in those paragraphs. The commenter states that it is preferable to refer to the work cards in Revision 7 of the maintenance manual, rather than to Temporary Revision No. 19, because the work cards more clearly identify the relevant material.

We concur that the work cards in Revision 7 of the Dassault Falcon 50 Maintenance Manual, as specified by the commenter, are a more definitive source of service information. We have revised paragraphs (a) and (b) of the supplemental NPRM accordingly.

Clarify Paragraph (c)

The commenter also asks us to revise the wording of paragraph (c) of the NPRM to include the words ''double skin.'' We concur that this change will provide clarification and, accordingly, have revised paragraph (c) of this supplemental NPRM to specify that the action described in that paragraph consists of rework of the seals of the DOUBLE-SKIN feeder tanks at frames 28 and 31.

Cost Impact

The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 8 work hours per airplane to accomplish the proposed leak tests, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed leak tests on U.S. operators is estimated to be $22,080, or $480 per airplane, per test.

The FAA estimates that it would take approximately 50 work hours per airplane to accomplish the proposed reworking of the seals in the feeder tanks, and that the average labor rate is $60 per work hour. The required parts would be provided at no charge to the operator. Based on these figures, the cost impact of the reworking of the seals on U.S. operators is estimated to be $138,000, or $3,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 2000–NM–335–AD.

Applicability: Model Mystere-Falcon 50 series airplanes, certificated in any category, serial numbers 222 to 286 inclusive, 288, 290, and 291.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leaks from the feeder tanks, which could result in fuel vapors in the cabin that could come into contact with ignition sources, accomplish the following:

Leak Testing

(a) Within 7 months after the effective date of this AD: Perform a feeder tank leak test by sampling at the drain ports of frames 29 and 31, in accordance with Work Card No. 686.3/1 of the Dassault Falcon 50 Maintenance Manual, Revision 7, dated August 2001. Repeat the leak test at intervals not to exceed 13 months, until accomplishment of paragraph (c) of this AD.

Corrective Action

(b) If the feeder tank leak test indicates that a leak is present: Prior to further flight, renew the seal, in accordance with Work Card No. 686.4/1 of the Dassault Falcon 50 Maintenance Manual, Revision 7, dated August 2001.

Modification

(c) Within 78 months since the date of manufacture of the airplane: Rework the seals of the double-skin feeder tanks at frames 28 and 31, in accordance with Dassault Service Bulletin F50–328, dated May 31, 2000. Accomplishment of the rework terminates the requirements of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–163–030(B), dated April 19, 2000.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32194 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–209–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require an inspection of the tripod strut assembly of the inboard support of the leading edge slat of the wing for a preload condition, and follow-on actions. For certain airplanes, this proposal also would require inspection and replacement of the existing tripod struts with new, adjustable struts, if necessary. This action is necessary to prevent damage to the tripod strut assembly due to a preload condition, which could result in loss of control of the inboard leading edge slat or separation of the slat from the airplane, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–209–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: John Craycraft, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2782; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–209–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–209–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The airplane manufacturer has informed the FAA that damaged bushings were found in the tripod strut assembly of the inboard support of the leading edge slat of the wings of a Model 767 series airplane in production. The damage was due to preload in the tripod assembly during installation. The tripod assembly is used to support the inboard leading edge slat and is the primary inboard-outboard load path of the slat. Loss of primary inboard-outboard load path for the slat can result in an unstable slat-to-wing connection, and separation of the slat from the airplane. Such conditions, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–57A0058, Revision 1, dated May 27, 1999, which describes procedures for a check (inspection) of the tripod strut assembly of the inboard support of the leading edge slat of the wing for a preload condition, and follow-on actions. The follow-on actions include:

• If no preload condition is found, a visual inspection of the components in the fitting assembly to determine if bushing holes are round.

• Replacement of the fitting assembly if the bushing holes are not round.

• If a preload condition is found, a high frequency eddy current inspection of the lug bore and base of the fitting assembly for cracking.

• Rework of the fitting assembly if no cracking is found, or if cracking is found in the lug bore only.

• Replacement of the fitting assembly if cracking is found in the lug base or the lug bore and base.

• Adjustment of the tripod struts, if necessary, to eliminate preload condition, and a check of the rigging of the inboard leading edge slat, and re-rigging if necessary.

• For certain airplanes, inspection for improperly cut and spliced struts, and strut replacement, if necessary.

The FAA also has reviewed and approved Boeing Service Bulletin 767–57–0037, dated January 14, 1993. For Group 2 airplanes (as defined in the service bulletin) the service bulletin describes procedures for doing a visual inspection of the tripod struts of the inboard leading edge of the wings to determine if they have been cut and spliced, and replacement with new, adjustable struts if the existing struts are cut and spliced with fewer than six hi-loks.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of certain actions specified in the service bulletins described previously, except as discussed below.

Differences Between This Proposed AD and the Service Bulletins

The service bulletins do not specify what type of visual inspection of the tripod assembly and tripod struts should be used. The FAA has determined that the procedures in the service bulletins describe a general visual inspection. Note 2 of this proposed AD defines that type of inspection.

Other differences include the following:

• Boeing Service Bulletin 767–57A0058, Revision 1, specifies doing a ''check'' for preload, however, this proposed AD uses the term ''general visual inspection.''

• The compliance time for doing the actions specified in the Boeing Service Bulletin 767–57A0058, Revision 1, is within 5,000 flight cycles or 24 months after the receipt of the service bulletin, whichever comes first. The airplane manufacturer has informed us that ''whichever comes first'' is an error in the compliance time and would put certain airplanes immediately out of compliance. The correct compliance time is ''whichever comes later,'' and this proposed AD requires that compliance time.

• The effectivity in Boeing Service Bulletin 767–57–0037 specifies line numbers 1 through 469 inclusive. The airplane manufacturer has informed us that line numbers 1 through 159 inclusive had a fixed strut which was not cut and spliced or preloaded. Line numbers 160 through 469 inclusive may have had a fixed strut which was cut and spliced, and if it was not cut and spliced it was still subject to being preloaded. Therefore, the affected line numbers are 160 through 469 inclusive, and those line numbers are included in this proposed AD.

Cost Impact

There are approximately 379 airplanes of the affected design in the worldwide fleet. The FAA estimates that 136 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspections of the tripod strut assembly and bushing holes, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $8,160, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator be required to accomplish the rework of the fitting assembly, it would take approximately 4 work hours per airplane to accomplish the proposed rework, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed rework would be $240 per airplane.

Should an operator be required to accomplish the high frequency eddy current inspection, it would take

approximately 5 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection would be $300 per airplane.

Should an operator be required to accomplish the replacement of the main strut support fitting, it would take approximately 14 work hours per airplane to accomplish the proposed replacement (on both the left and right wings of the airplane, excluding the time for gaining access and closing up), at an average labor rate of $60 per work hour.

Required parts would cost approximately $12,380 per airplane. Based on these figures, the cost impact of the proposed replacement would be $13,220 per airplane.

Should an operator be required to accomplish the inspection for improperly cut and spliced struts, it would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection of the struts proposed by this AD would be $60 per airplane.

Should an operator be required to accomplish the replacement of a cut and spliced strut with a new, adjustable tripod strut, it would take approximately 4 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the replacement proposed by this AD would be $240 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–209–AD.

Applicability: Model 767 series airplanes, line numbers 160 through 541 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the tripod strut assembly due to a preload condition, which could result in loss of control of the inboard leading edge slat or separation of the slat from the airplane, and consequent reduced controllability of the airplane, accomplish the following:

Inspections

(a) For all airplanes: Before the accumulation of 5,000 total flight cycles or within 24 months after the effective date of this AD, whichever is later: Do a general visual inspection (check) of the tripod strut assembly of the inboard leading edge slat of each wing for a preload condition, per Figure 2 of Boeing Service Bulletin 767–57A0058, Revision 1, dated May 27, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(1) If no preload condition is found, before further flight, inspect the fitting assembly bushing holes for roundness, per Figure 5 of the Accomplishment Instructions of the service bulletin.

(i) If all the bushing holes are round, before further flight, do the inspection required by paragraph (c) of this AD.

(ii) If any bushing hole is not round, before further flight, do the inspections required by paragraphs (b) and (c) of this AD.

(2) If a preload condition is found, before further flight, do the inspections required by paragraphs (b) and (c) of this AD.

Follow-on Actions

(b) For airplanes subject to paragraph (a)(1)(ii) or (a)(2) of this AD: Do a high frequency eddy current inspection of the fitting assembly lug for cracking, per Figure 6 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0058, Revision 1, dated May 27, 1999.

(1) If no cracking is found, or if cracking is found in the lug bore only, before further flight, rework the fitting assembly lug per Figure 7 of the Accomplishment Instructions of the service bulletin.

(2) If cracking is found in the fitting lug base or the lug bore and base, before further flight, purge the auxiliary fuel tank and replace the fitting assembly lug per Figure 8 of the Accomplishment Instructions of the service bulletin.

(c) For airplanes subject to paragraph (a)(1)(i), (a)(1)(ii), or (a)(2) of this AD: Do a general visual inspection of the bushing holes of the main strut assembly to determine if the bushing holes are round, per Figure 9 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0058, Revision 1, dated May 27, 1999.

(1) If the bushing holes are round, before further flight, assemble the tripod assembly per Figure 11 or Figure 12, as applicable, of the Accomplishment Instructions of the service bulletin.

(2) If the bushing holes are not round, before further flight, replace the main strut fitting assembly per Figure 10 of the Accomplishment Instructions of the service bulletin, then assemble the tripod assembly per Figure 11 or Figure 12, as applicable, of the Accomplishment Instructions of the service bulletin.

Note 3: Inspections and follow-on actions done before the effective date of this AD per Boeing Alert Service Bulletin 767–57A0058, dated June 11, 1998, are considered acceptable for compliance with the applicable actions specified in this AD.

Inspection/Replacement of Tripod Struts

(d) For Group 2 airplanes that have not accomplished Boeing Service Bulletin 767–57–0037, dated January 14, 1993: Before further flight after doing the inspections and follow-on actions required by paragraphs (a),

(b), and (c) of this AD, do a general visual inspection of the tripod struts to determine if they have been cut and spliced, per the Accomplishment Instructions of the service bulletin.

(1) If the tripod struts have been cut and spliced with fewer than six hi-loks, before further flight, replace with new, adjustable struts, per Figure 1 of the Accomplishment Instructions of the service bulletin.

(2) If the tripod struts have not been cut and spliced, or they have been cut and spliced with six hi-loks, no further action is required by this paragraph.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32195 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–39–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–34–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747SP, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747SP, and 747SR series airplanes. This proposal would require one-time inspections for cracking in certain upper deck floor beams and follow-on actions. This action is necessary to find and fix cracking in certain upper deck floor beams. Such cracking could extend and sever floor beams adjacent to the body frame and result in rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 19, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–34–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–34–AD.'' The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of fatigue cracking on the left and right ends of the upper chord of the station (STA) 340 upper deck floor beam on several Boeing Model 747 series airplanes. Also, during fatigue tests on a Boeing 747SR test airplane, multiple cracks up to 0.3 inch long were found in both the left and right ends of the upper chord of the STA 340 floor beam. On certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747SP, and 747SR series airplanes, the STA 340 upper deck floor beam, as well as the floor beam at STA 360, are made from 7075 aluminum. Other upper deck floor beams on these models are made from 2024 aluminum, which is known to be more durable than 7075 aluminum against fatigue. Cracking of the upper deck floor beam at STA 340 or STA 360, if not corrected, could extend and sever floor beams adjacent to the body frame and result in rapid depressurization of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001, which describes procedures for one-time detailed visual and open-hole high frequency eddy current (HFEC) inspections for cracking in the upper deck floor beams at STA 340 and STA 360, and follow-on actions. The follow-on actions consist of repair of any cracking found during the inspections or, if no cracking is found, modification of the upper deck floor beams. These follow-on actions are described below:

- The repair described in the service bulletin is identified as a ''time-limited repair'' and includes removing certain fasteners and the existing strap, performing open-hole HFEC inspections of the chord and web, stop-drilling web cracks, replacing the outboard section of the web, if necessary, and installing new straps. The service bulletin specifies that the time-limited repair must be replaced with a permanent repair after a certain amount of time and that operators are to contact Boeing for instructions for such permanent repair.
- The modification described in the service bulletin involves removing the existing straps, and installing new straps. Also, the service bulletin notes that, if this modification is not accomplished immediately following the inspections described previously, the inspections must be repeated one time, immediately before the modification is accomplished.

The service bulletin also specifies accomplishment of repetitive post-repair or post-modification open-hole HFEC inspections for cracking of fastener holes common to the upper chord, reinforcement straps, and the body frame; or, alternatively, surface HFEC inspections for cracking along the lower edge of the upper chord of the floor beam at the intersection with the body frame. However, the service bulletin does not provide detailed instructions for these inspections or for repairs of any cracking that is found.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, including instructions for a permanent repair, if necessary, this proposal would require such repairs to be accomplished according to a method approved by the FAA, or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Also, while the service bulletin specifies that instructions for post-modification/repair inspections will be included in future revisions of the service bulletin, paragraph (d) of the proposed AD would require post-modification/repair inspections to be done according to a method approved by the FAA, or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

Cost Impact

There are approximately 539 airplanes of the affected design in the worldwide fleet. The FAA estimates that 168 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 8 work hours per airplane to accomplish the initial inspections, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of these proposed inspections on U.S. operators is estimated to be $80,640, or $480 per airplane.

It would take approximately 24 work hours per airplane to accomplish the modification or permanent repair, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed modification or repair on U.S. operators is estimated to be $241,920 or $1,440 per airplane.

It would take approximately 8 work hours per airplane to accomplish the post-modification/repair inspections, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed post-modification/repair inspections on U.S. operators is estimated to be $80,640 or $480 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–34–AD.

Applicability: Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747SP, and 747SR series airplanes; line numbers 1 through 810 inclusive; certificated in any category; and NOT equipped with a nose cargo door.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking in certain upper deck floor beams, which could extend and sever floor beams adjacent to the body frame and result in rapid depressurization of the airplane, accomplish the following:

Inspections

(a) At the compliance time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, perform one-time detailed visual and open-hole high frequency eddy current (HFEC) inspections for cracking in the upper deck floor beams at station (STA) 340 and STA 360, according to Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001.

(1) For airplanes with 22,000 or fewer total flight cycles as of the effective date of this AD: Do the inspections prior to the accumulation of 16,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever is later.

(2) For airplanes with more than 22,000 total flight cycles as of the effective date of this AD: Do the inspections within 500 flight cycles after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Modification

(b) If no crack is found during the inspections per paragraph (a) of this AD: Within 5,000 flight cycles after the initial inspections, modify the upper deck floor beams at STA 340 and STA 360, according to Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001. If this modification is not accomplished before further flight after the inspections required by paragraph (a) of this AD, those inspections must be repeated one time, immediately before accomplishing the modification in this paragraph. If any crack is found during these repeat inspections, before further flight, accomplish paragraph (c)(2) of this AD.

Repair

(c) If any crack is found during the inspections per paragraph (a) of this AD: Before further flight, repair according to either paragraph (c)(1) or (c)(2) of this AD.

(1) Accomplish repairs according to paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Accomplish a temporary repair (including removing certain fasteners and the existing strap, performing open-hole HFEC inspections of the chord and web, stop-drilling web cracks, replacing the outboard section of the web, if applicable, and installing new straps) according to Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001; except where the service bulletin specifies to contact Boeing for appropriate action, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. AND,

(ii) Within 18 months or 1,500 flight cycles after installation of the temporary repair according to paragraph (c)(1)(i) of this AD, whichever is first, do paragraph (c)(2) of this AD.

(2) Accomplish a permanent repair according to a method approved by the Manager, Seattle ACO, or according to data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Note 3: Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001, does not contain instructions for permanent repairs.

Repetitive Inspections: Post-Modification/Repair

(d) Within 15,000 flight cycles after modification of the upper deck floor beams per paragraph (b) of this AD, or repair of the upper deck floor beams per paragraph (c) of this AD, as applicable: Perform either open-hole HFEC inspections for cracking of fastener holes common to the upper chord, reinforcement straps, and the body frame; or surface HFEC inspections for cracking along the lower edge of the upper chord of the floor beam at the intersection with the body frame; and repeat these inspections at the interval specified in paragraph (d)(1) or (d)(2) of this AD, as applicable. Perform these inspections and repair any cracking found during these inspections according to a method approved by the Manager, Seattle ACO, or according to data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For an inspection or repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(1) If the most recent inspection used the surface HFEC method: Repeat the inspection within 1,000 flight cycles.

(2) If the most recent inspection used the open-hole HFEC method: Repeat the inspection every 3,000 flight cycles.

Note 4: There is no terminating action at this time for the repetitive post-modification/repair inspections according to paragraph (d) of this AD, and instructions for these inspections are not provided in Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32196 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–205–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4 Series Airplanes; Model A300 F4–605R Airplanes; Model A300 B4–600 and A300 B4–600R Series Airplanes; and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and A300 B4 series airplanes; certain Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes; and certain Model A310 series airplanes. That earlier proposed AD would have required repetitive inspections to detect damage of the fillet seals and feeder cables, and of the wiring looms in the wing/pylon interface area; and corrective action, if necessary. That earlier proposed AD also would have provided for optional terminating action for the repetitive inspections. This new action would retain those proposed actions but require that actions be done in accordance with newly revised service bulletins. This new action also would revise the applicability. The actions specified by this new proposed AD are intended to prevent wire chafing and short circuits in the wing leading edge/pylon interface area, which could result in loss of the power supply generator and/or system functions. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 28, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–205–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket 2001–NM–205–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2001–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and A300 B4 series airplanes; certain Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes; and certain Model A310 series airplanes; was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 4, 2001 (66 FR 50588). That original NPRM would have required repetitive inspections to detect damage of the fillet seals and feeder cables, and of the wiring looms in the wing/pylon interface area; and corrective action, if necessary. The original proposed AD also would have provided for optional terminating action for the repetitive inspections. The original NPRM was prompted by reports of wire chafing and short circuits in the wing leading edge/pylon interface area. That condition, if not corrected, could result in loss of the power supply generator and/or system functions.

Since Issuance of the Original NPRM

Since the original NPRM was issued, Airbus has issued new service information that would affect the requirements proposed by that NPRM.

Explanation of Relevant Service Information

Airbus Service Bulletin A300–24–0053, Revision 05, was cited in the original NPRM as the appropriate source of service information for the inspection of the fillet seals and feeder cables for Model A300 series airplanes. Airbus has since issued Revision 06 of the service bulletin, dated September 10, 2001, which describes the basic pylon and common pylon configurations and distinguishes the procedures for repairing damaged fillet seals for the two configurations.

The original NPRM cited Airbus Service Bulletin A300–54–0095, Revision 01, as the appropriate source of service information for the optional replacement of the fillet panel assemblies on Model A300 series airplanes. Airbus has since issued Revision 02 of the service bulletin, dated September 7, 2001, to include a new kit for airplanes in the basic pylon configuration. Either Revision 01 or Revision 02 would eliminate the need for the repetitive inspections for airplanes in the common pylon configuration; only Revision 02 would eliminate the need for the repetitive inspections for airplanes in the basic pylon configuration.

The original NPRM cited Airbus Service Bulletin A300–24–6039, Revision 06, as the appropriate source of service information for the inspection and repair of the wiring looms for Model A300–600 series airplanes. Airbus has since issued Revision 07 of the service bulletin, dated August 9,

2001, which includes minor changes only.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, approved these service bulletin revisions.

Accomplishment of the actions specified in Airbus Service Bulletins A300–24–0053, Revision 06, A300–24–6001, Revision 05, A310–24–2021, Revision 06, A300–24–0083, Revision 03, A300–24–6039, Revision 07, and A310–24–2052, Revision 04, is intended to adequately address the identified unsafe condition.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Extend the Compliance Time for the Inspection

One commenter requests that the compliance time specified by the original NPRM be extended from 500 flight hours to 600 flight hours. According to the commenter, a ''600 FH ''grace period'' is compatible with the highest existing interval for an A-check.''

The FAA concurs with the request. The FAA finds it appropriate to extend the compliance time to 600 flight hours and has determined that such an extension would not adversely affect the safety of the fleet. Paragraphs (a) and (b) of this supplemental NPRM have been revised accordingly.

Requests to Cite Latest Service Bulletin Revisions

The commenters request that the original NPRM be revised to refer to the latest service bulletin revisions (described previously). Airbus Service Bulletins A300–24–0053, Revision 06, and A300–54–0095, Revision 02, have included procedures for the inspection and repair of airplanes in the basic pylon configuration. One commenter states that the earlier revisions of these service bulletins properly cover the common pylon configuration but are not suitable for the basic pylon configuration. The commenters also request that Revision 07 of Service Bulletin A300–24–6039 be cited as the primary service information for the wiring loom inspection for Model A300–600 series airplanes.

The FAA partially concurs with the requests. Although accomplishment of the actions specified by earlier service bulletin revisions may be acceptable for certain airplanes, the FAA has determined that, for simplicity, this supplemental NPRM will cite only the latest service bulletin revisions for the proposed actions specified in paragraphs (a) and (b) of this supplemental NPRM. As a result, paragraphs (a) and (b) of this supplemental NPRM have been revised, and Note 3 and Note 5 of the original NPRM have been removed (and the remaining Notes have been renumbered). However, paragraph (c) of this supplemental NPRM has been revised to specify accomplishment of the terminating action in accordance with either Revision 01 or Revision 02 of Airbus Service Bulletin A300–54–0095 for airplanes in the common pylon configuration, but would require Revision 02 for airplanes in the basic pylon configuration. Operators should note that the provisions of paragraph (d) of this supplemental NPRM would enable the FAA to approve requests for alternative methods of compliance (e.g., per an alternative service bulletin revision) if data are submitted to substantiate that such alternative methods would provide an acceptable level of safety.

Request to Disallow Credit for Repair Per Certain Service Bulletin Versions

One commenter requests that the original NPRM be revised to specifically exclude credit for repairs done in accordance with revisions prior to Revision 05 of Airbus Service Bulletin A300–24–6011 and Revision 06 of Airbus Service Bulletin A310–24–2021. Note 3 of the original NPRM would have provided this credit. Note 3 of the original NPRM refers to paragraph (a) of the original NPRM. The commenter states that earlier revisions of these service bulletins are acceptable for accomplishment of detailed visual inspections to detect damage (including erosion and tearing) and deterioration of the fillet seals and feeder cables, but not the repairs of damage on applicable affected airplanes.

The FAA partially concurs. The FAA agrees that the repair procedures described in those earlier revised service bulletins are not acceptable for the basic pylon configuration, and notes that the repair procedures have been deleted from Airbus Service Bulletins A300–24–6011, Revision 05, and A310–24–2021, Revision 06. However, as stated earlier, Note 3 and Note 5 of the original NPRM, which provided credit for prior accomplishment of the earlier service bulletin revisions, have been removed from this supplemental NPRM, but operators may request approval of an alternative method of compliance in accordance with paragraph (d) of this supplemental NPRM. No additional change is necessary in this regard.

Request to Change Inspection Type

One commenter, the manufacturer, requests that the original NPRM be revised to change the inspection type from a general visual inspection to a detailed visual inspection. According to the manufacturer, ''even if not always clearly stated in the Airbus SBs, visual inspection means detailed visual inspection and not general visual inspection.''

The FAA finds that detailed visual inspections are appropriate to address the identified unsafe condition, and concurs with the commenter's request. Paragraphs (a) and (b) of this supplemental NPRM have been revised to specify detailed, rather than general, visual inspections. In addition, Note 2 of this supplemental NPRM has been revised to define a detailed visual inspection.

Request to Revise Applicability of Proposed AD

One commenter requests that Table 1 of the original NPRM be revised to reflect the correct applicability. The original NPRM indicates that airplanes would be excluded from the applicability if either of two specified modifications had been accomplished. The commenter states that the applicability should exclude only airplanes on which both of the specified modifications have been accomplished.

The FAA concurs. The original NPRM inadvertently substituted the conjunction ''or'' for ''and'' between the modification numbers listed in Table 1. The applicability of this supplemental NPRM has been revised to exclude airplanes only if both of the specified modifications have been accomplished.

Conclusion

Since these changes expand the scope of the original NPRM, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 107 airplanes of U.S. registry would be affected by this supplemental NPRM.

It would take approximately 6 work hours per airplane to inspect the seals/cables at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $38,520, or $360 per airplane, per inspection cycle.

It would take approximately 5 work hours per airplane to inspect the wiring looms and apply the protection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $32,100, or $300 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to perform the optional terminating action, it would take approximately 5 work hours per airplane to replace the fillet panel assemblies, at an average labor rate of $60 per work hour. Required parts would cost approximately $350 to $470 per airplane. Based on these figures, the cost impact of the optional terminating action is estimated to be $650 to $770 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2001–NM–205–AD.

Applicability: The following airplanes, certificated in any category:

Model	Excluding those modified per Airbus modification
A300 B2–1C, A300 B2–203, A300 B2K–3C, and A300 B4 series	11349 and airplanes 12309.
A300 F4–605R airplanes, A300 B4–600 series airplanes, and A300 B4–600R series airplanes	11348 and 12303.
A310 series airplanes	11350 and 12310.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent wire chafing and short circuits in the wing leading edge/pylon interface area, which could result in loss of the power supply generator and/or system functions, accomplish the following:

Inspections

(a) Within 600 flight hours after the effective date of this AD, perform a detailed visual inspection to detect damage (including erosion and tearing) and deterioration of the fillet seals and feeder cables, in accordance with Airbus Service Bulletin A300–24–0053, Revision 06, dated September 10, 2001 (for Model A300 series airplanes); A300–24–6011, Revision 05, dated May 18, 2001 (for Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes); or A310–24–2021, Revision 06, dated May 18, 2001 (for Model A310 series airplanes). Repeat the inspection thereafter at intervals not to exceed 1,000 flight hours, until the actions specified by paragraph (c) are accomplished.

(1) If no damage is detected: Prior to further flight following the initial inspection only, apply protection to each feeder cable in accordance with the applicable service bulletin.

(2) If any damage is detected: Prior to further flight, repair in accordance with the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Note 3: Airbus Service Bulletins A300–24–0053, A300–24–6011, and A310–24–2021 refer to Airbus Service Bulletins A300–24–0054, A300–24–6013, and A310–24–2024, respectively, as additional sources of service information for repair.

(b) Within 600 flight hours after the effective date of this AD: Perform a detailed visual inspection of the wiring looms in the area of the wing leading edge/pylon interface to detect damage (including chafing, burning, and short circuits), in accordance with Airbus Service Bulletin A300–24–0083, Revision 03, dated January 3, 2001 (for Model A300 series airplanes); A300–24–6039, Revision 07, dated August 9, 2001 (for Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes); or A310–24–2052, Revision 04, dated April 6, 2001 (for Model A310 series airplanes); as applicable. Repeat the inspection thereafter at least every 1,000 flight hours, until the actions specified by paragraph (c) of this AD have been accomplished.

(1) If no damage is detected: Prior to further flight following the initial inspection only, apply protection in accordance with the applicable service bulletin.

(2) If any damage is detected: Prior to further flight, repair in accordance with the applicable service bulletin.

Optional Terminating Action

(c) Replacement of the fillet panel assemblies with new, improved assemblies,

as specified by paragraphs (c)(1), (c)(2), or (c)(3) of this AD, as applicable, terminates the requirements of this AD.

(1) For Model A300 series airplanes: Replacement of the fillet panel assemblies, if accomplished, must be done as specified by paragraph (c)(1)(i) or (c)(1)(ii) of this AD.

(i) For airplanes in the common pylon configuration: In accordance with Airbus Service Bulletin A300–54–0095, Revision 01, dated January 3, 2001, or Revision 02, dated September 7, 2001.

(ii) For airplanes in the basic pylon configuration: In accordance with Airbus Service Bulletin A300–54–0095, Revision 02, dated September 7, 2001.

(2) For Model A300 F4–605R airplanes and Model A300 B4–600 and A300 B4–600R series airplanes: Replacement of the fillet panel assemblies, if accomplished, must be done in accordance with Airbus Service Bulletin A300–54–6032, Revision 03, dated January 3, 2001.

(3) For Model A310 series airplanes: Replacement of the fillet panel assemblies, if accomplished, must be done in accordance with Airbus Service Bulletin A310–54–2033, Revision 01, dated January 3, 2001.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 26, 2001.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–32197 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

(Docket No. RM96–1–020)

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued December 20, 2001.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend § 284.12 of its regulations governing standards for conducting business practices with interstate natural gas pipelines. The Commission is proposing to incorporate by reference the most recent version of the standards, Version 1.5, promulgated August 18, 2001 by the Gas Industry Standards Board (GISB). Version 1.5 of the GISB standards can be obtained from GISB at 1100 Louisiana, Suite 4925, Houston, TX 77002, 713–356–0060, *http://www.gisb.org.*

DATES: Comments are due February 1, 2002.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1283

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0507

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

1. The Federal Energy Regulatory Commission (Commission) proposes to amend § 284.12 of its open access regulations governing standards for conducting business practices and electronic communications with interstate natural gas pipelines. The Commission is proposing to adopt the most recent version, Version 1.5, of the consensus industry standards, promulgated by the Gas Industry Standards Board (GISB). The Commission also is proposing to remove § 284.12(a) of its regulations dealing with pipeline Electronic Bulletin Boards (EBBs), since all pipelines are required under Commission regulations to provide all electronic communications and conduct all electronic transactions using the public Internet.[1] The proposed rule is intended to benefit the public by adopting the most recent and up-to-date standards governing electronic communication that includes new shipper options such as title transfer tracking, as well as standards for imbalance netting and trading and uniform procedures for implementation of aspects of Order No. 637.[2]

2. Background

3. Since 1996, in the Order No. 587 series,[3] the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In this series of orders, the Commission incorporated by reference consensus standards developed by GISB, a private consensus standards developer composed of members from all segments of the natural gas industry. GISB is an accredited standards organization under the auspices of the American National Standards Institute (ANSI).

4. On October 19, 2001, GISB filed with the Commission a report informing the Commission that it had adopted a new version of its standards, Version 1.5. On December 3, 2001, GISB filed with the Commission a report listing errata to the Version 1.5 standards.

[1] 18 CFR 284.12(c)(3)(i)(A) (2001).

[2] Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,091 (Feb. 9, 2000).

[3] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,050 (Mar. 4, 1997), Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062 (Apr. 16, 1998), Order No. 587–H, 63 FR 39509 (July 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,063 (July 15, 1998); Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,067 (Sept. 29, 1998), Order No. 587–K, 64 FR 17276 (Apr. 9, 1999), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,072 (Apr. 2, 1999); Order No. 587–M, 65 FR 77285 (Dec. 11, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,114 (Dec. 11, 2000).

5. GISB reports that its newest version contains some of the following highlights: modifications to the data set, data element, and code value tables to support Internet web page standards and the transition of EBBs to the Internet; business practice standards and data sets governing imbalance netting and trading (although standards for electronic data interchange of the imbalance netting and trading are still in process); standards for title transfer tracking (TTT), with a recommendation from the GISB Executive Committee that these standards be implemented no earlier than eight months from publication of these standards on August 18, 2001; and standards to support the implementation of Order No. 637 (additional standards are still being considered at the subcommittee level). GISB also reports that its electronic delivery mechanism standards include modifications related to the surety assessment performed by Sandia National Laboratories on the GISB Electronic Delivery Mechanism (EDM) standards.

6. **Discussion**

7. The Commission is proposing to adopt Version 1.5 [4] of GISB's consensus standards.[5] Pipelines would be required to implement the standards three months after a final rule is issued.[6]

8. Version 1.5 of the GISB standards provides added flexibility to shippers, standardizes additional business practices, and update and improves the current standards.[7] The principal changes occur in the areas of title transfer tracking, imbalance netting and trading, and improvement of the standards for conducting business transactions electronically over the Internet. Version 1.5 incorporates a series of standards (Standards 1.3.64 through 1.3.78) providing that natural gas pipelines track title transfers at pooling points. These standards will provide shippers with greater flexibility in structuring business transactions, and will enhance the liquidity of the natural gas market by providing for accurate accounting of gas purchase and sale transactions and integrating such transactions into the pipeline scheduling process. Version 1.5 includes new standards (standards 2.3.36 through 2.3.50) for transmitting statements of allocation and implementing imbalance netting and trading as required by the Commission's regulations.[8] Version 1.5 also updates and improves the standards by modifying the electronic communication standards to better support Internet web page standards and the transition of EBBs to the Internet and by effectuating changes to accommodate the recommendations of Sandia National Laboratories. Commission adoption of these standards will keep the Commission regulations current.[9]

9. GISB approved the standards under its consensus procedures.[10] As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like GISB, as means to carry out policy objectives or activities.[11]

10. While comments are requested on all of the GISB standards, the Commission specifically requests comment on whether it should adopt revised standard 5.3.2 dealing with the timeline for capacity release transactions. The revision to standard 5.3.2 in Version 1.5 was made in response to Order No. 637 in which the Commission adopted a regulation requiring pipelines to provide scheduling equality between capacity release transactions and pipeline transportation services.[12] The regulation states:

11. Pipelines must permit shippers acquiring released capacity to submit a nomination at the earliest available nomination opportunity after the acquisition of capacity. If the pipeline requires the replacement shipper to enter into a contract, the contract must be issued within one hour after the pipeline has been notified of the release, but the requirement for contracting must not inhibit the ability of the replacement shipper to submit a nomination at the earliest available nomination opportunity.

12. GISB standards adopted by the Commission currently provide for four nomination cycles: a timely nomination at 11:30 a.m. to take effect at 9 a.m. central clock time (CCT) [13] the next gas day, an Evening nomination at 6 p.m. CCT to take effect at 9 a.m. CCT the next gas day, an Intra-Day 1 nomination at 10 a.m. CCT to take effect at 5:00 p.m. CCT on the same gas day, and an Intra-Day 2 nomination at 5 p.m. CCT to take effect at 9 p.m. CCT on the same gas day.[14] In implementing the scheduling equality requirement, the Commission held that a replacement shipper under a capacity release transaction must be able to nominate coincident with notification to the pipeline of a pre-arranged capacity release transaction or coincident with the award of capacity

[4] The incorporation includes the errata sheets published by GISB.

[5] Pursuant to the regulations regarding incorporation by reference, copies of Version 1.5 of the standards are available from GISB. 5 U.S.C. 552 (a)(1); 1 CFR 51 (2001).

[6] GISB standard 1.3.78 provides that implementation of TTT not take place until eight months after publication of the TTT standards in the GISB standards manual (which took place on August 18, 2001), and the Commission proposes to adopt that recommendation.

[7] In Version 1.5, GISB made the following changes to its standards. It added Principles 1.1.20, 1.1.21 and 2.1.5; Definitions 1.2.13 through 1.2.19, 2.2.2, 2.2.3, and 4.2.20; Standards 1.3.64 through 1.3.78, 2.3.36 through 2.3.50, 3.3.26, 4.3.86, 4.3.87, and 5.3.43; and Data Sets 2.4.7 through 2.4.16. It revised Standards 1.3.2, 1.3.54, 1.3.61, 1.3.63, 2.3.30, 2.3.32, 2.3.34, 4.3.16, 4.3.23, 4.3.35, 5.3.2, 5.3.22, 5.3.24, 5.3.31, 5.3.32, and 5.3.33, and Data Sets 1.4.1 through 1.4.7, 2.4.1, 2.4.3 through 2.4.6, 3.4.1, 3.4.2, 3.4.4, 5.4.1 through 5.4.10, 5.4.12, 5.4.13, and 5.4.16 through 5.4.19. It deleted Principles 4.1.5 and 4.1.8, and Standard 4.3.77.

[8] 18 CFR 284.12 (c)(2)(ii) (2001).

[9] The Commission also is continuing its previous practice by proposing to exclude standards 2.3.29 dealing with operational balancing agreements (OBAs), 2.3.30 dealing with netting and trading of imbalances, and 4.3.4 dealing with retention of electronic data. The Commission has issued its own regulations in these areas (18 CFR 284.12(c)(2)(i) (OBAs), (c)(2)(ii) (netting and trading of imbalances), and (c)(3)(v) (record retention)), so that incorporation of the GISB standards is unnecessary and may cause confusion as to the applicable Commission requirements.

[10] This process first requires a super-majority vote of 17 out of 25 members of GISB's Executive Committee with support from at least two members from each of the five industry segments—interstate pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of GISB's general membership must ratify the standards.

[11] Pub. L. No. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[12] 18 CFR 284.12 (c)(1)(ii) (2001); Order No. 637, 65 FR at 10191, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,091, at 31,297.

[13] CCT refers to Central Clock Time, which includes an adjustment for day light savings time. See 18 CFR 284.12(b)(1)(i), Nominations Related Standards 1.3.1 (2001). Under the GISB standards, a gas day runs from 9 a.m. central clock time (CCT) on Day 1 to 9 a.m. CCT the next day (Day 2). 18 CFR 284.12(b)(1)(i), Nominations Related Standards 1.3.1 (2001).

[14] 18 CFR 284.12(b)(1)(i) (2001), Nominations Related Standard 1.3.2 (2001).

subject to the Commission's bidding requirements.[15]

13. With respect to pre-arranged capacity release transactions not subject to bidding, the Commission found that releasing shippers should be able to inform the pipeline of such prearranged deals at any of the four nomination opportunities and the replacement shipper should be able to submit a nomination at the time the pipeline is informed of the release. For example, if the pipeline is informed of a capacity release transaction at the 6 p.m. CCT timely nomination timeline, the replacement shipper should be permitted to submit an evening nomination for the next gas day at 6 p.m.[16]

14. With respect to capacity release transactions subject to bidding, the Commission found that shippers should be able to nominate coincident with the award of capacity. For example, under the existing Version 1.4 of the GISB standards, award notification for short-term biddable capacity release transactions is made at 5 p.m.[17] The Commission found that replacement shippers should be permitted to submit a nomination at the 5 p.m. Intra-Day 2 cycle for that capacity award.[18]

15. In Version 1.5, GISB made a number of changes to its timeline for capacity release transactions (standard 5.3.2). It reconfigured its timeline for short-term biddable releases (less than one year) so that posting of bidding will begin at 12 p.m. on a business day with the award of capacity made by 3:00 p.m.[19] The standard then provides that ''contract issued within one hour of award posting (with a new contract number, when applicable); nomination possible beginning at the next available nomination cycle for the effective date of the contract. (Central Clock Time).'' Thus, under the reconfigured timeline a shipper awarded capacity at 3 p.m. can make a nomination at the next available nomination cycle (the 5 p.m. Intra-Day 2 Nomination cycle). This appears to be the same result obtained under the Commission's implementation of Order No. 637.

16. However, with respect to non-biddable pre-arranged capacity release transactions not subject to bidding, the GISB Version 1.5 standard differs from the implementation process established by the Commission. Under the GISB standard, shippers must notify the pipeline of a pre-arranged capacity release transaction one-hour prior to the nomination deadline. For example, the standard for the Timely Nomination states: ''posting of prearranged deals not subject to bid are due by 10:30 A.M. on a Business Day; contract issued within one hour of award posting (with a new contract number, when applicable); nomination possible beginning at the next available nomination cycle for the effective date of the contract. (Central Clock Time).'' The requirement for one-hour prior notice is not consistent with the Commission's implementation of Order No. 637 in which the Commission required pipelines to permit notice coincident with the nomination deadline (*e.g.,* 11:30 a.m. notice for an 11:30 a.m. nomination).

17. The Commission requests comment on whether it should adopt the one-hour prior notice requirement in GISB standard 5.3.2. Comments should discuss the benefits or detriments of adopting the one-hour prior notice requirement notwithstanding that pipelines already are required to implement scheduling equality without such prior notice.

18. In addition, the Commission is proposing to eliminate existing § 284.12(a) dealing with Electronic Bulletin Boards (EBBs) to clean up its regulations. In 1998, in Order No. 587–G, the Commission required pipelines to provide all electronic information and to conduct electronic transactions using the public Internet.[20] At that time, the Commission retained its regulations governing EBBs to provide for a transition period as pipelines began the process of converting from EBBs to Internet communication. At this time, the transition to Internet communication should be complete and continuation of regulations regarding EBB communication, therefore, no longer appears necessary.[21]

19. **Notice of Use of Voluntary Consensus Standards**

20. Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that Federal Agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation containing a standard identifying whether a voluntary consensus standard or a government-unique standard is being proposed. In this NOPR, the Commission is proposing to incorporate by reference Version 1.5 (August 18, 2001) of the voluntary consensus standards developed by GISB.

21. **Information Collection Statement**

22. The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimates include the costs for implementing GISB's Version 1.5 standards which incorporate the most recent and up-to-date standards governing electronic communication including new shipper options such as title transfer tracking, as well as standards for imbalance netting and trading and uniform procedures for implementation of aspects of Order No. 637. The burden estimates are primarily related to start-up for implementing the latest version of the standards and will not be on-going costs.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–545	93	1	38	3,534

[15] Colorado Interstate Gas Company, 95 FERC ¶ 61,321, at 62,111–12 (2001), 97 FERC ¶ 61,011 (2001). *See, e.g.,* Kinder Morgan Interstate Gas Transmission, LLC, 97 FERC ¶ 61,062 (2001); MIGC, Inc, 97 FERC ¶ 61,042 (2001); National Fuel Gas Supply Corporation, 96 FERC ¶ 61,182, at 61,804–805 (2001); Paiute Pipeline Company, 96 FERC ¶ 61,167, at 61,748–49 (2001); Transcontinental Gas Pipe Line Corporation, 96 FERC ¶ 61, 352, at 62,323 (2001); Trailblazer Pipeline Company, 97 FERC ¶ 61,056 (2001).

[16] Colorado Interstate Gas Company, 95 FERC ¶ 61,321, at 62,111–12 (2001).

[17] 18 CFR 284.12(b)(1)(v) (2001), Capacity Release Related Standard 5.3.2 (2001).

[18] Colorado Interstate Gas Company, 95 FERC ¶ 61,321, at 62,111–12 (2001).

[19] Biddable releases of one year or more have a three day bidding period.

[20] 18 CFR 284.12(c)(3)(i)(A) (2001).

[21] Current §§ 284.12(c)(3)(ii) and (v) contain similar posting requirements for Internet communication as existing § 284.12(a) does for EBBs, so retention of § 284.12(a) would be duplicative and unnecessary.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total number of hours
FERC–549C	93	1	4,526	420,918

Total annual Hours for Collection
(Reporting and Recordkeeping, (if appropriate) = 424,452

23. Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be the following:

	FERC–545	FERC–549C
Annualized Capital/Startup Costs	$198,857	$23,684,934
Annualized Costs (Operations & Maintenance)	0	0
Total Annualized Costs	198,857	23,684,934

24. OMB regulations [22] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal); FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines.

Action: Proposed collections.

OMB Control No.: 1902–0154, 1902–0174.

Respondents: Business or other for profit, (Interstate natural gas pipelines (Not applicable to small business.))

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

25. *Necessity of Information:* This proposed rule, if implemented, would upgrade the Commission's current business practice and communication standards to the latest edition approved by GISB (Version 1.5). These standards include new shipper options such as title transfer tracking, as well as standards for imbalance netting and trading and uniform procedures for implementation of aspects of Order No. 637. The implementation of these standards are necessary to increase the efficiency of the pipeline grid.

26. The information collection requirements of this proposed rule will be reported directly to the industry users. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act to monitor activities of the natural gas industry to ensure its competitiveness and to assure the improved efficiency of the industry's operations. The Commission's Office of Markets, Tariffs and Rates will use the data in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

27. *Internal Review:* The Commission has reviewed the requirements pertaining to business practices and electronic communication with natural gas interstate pipelines and made a determination that the proposed revisions are necessary to establish a more efficient and integrated pipeline grid. Requiring such information ensures both a common means of communication and common business practices which provide participants engaged in transactions with interstate pipelines with timely information and uniform business procedures across multiple pipelines. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

28. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425 email: michael.miller@ferc.fed.us].

29. Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7318, fax: (202) 395–7285].

30. **Environmental Analysis**

31. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[23] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[24] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[25] Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

32. **Regulatory Flexibility Act Certification**

33. The Regulatory Flexibility Act of 1980 (RFA) [26] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations proposed here impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

34. **Comment Procedures**

35. The Commission invites interested persons to submit written comments on the matters and issues proposed in this

[22] 5 CFR 1320.11.

[23] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[24] 18 CFR 380.4.

[25] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[26] 5 U.S.C. 601–612.

notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due February 1, 2002. Comments may be filed either in paper format or electronically. Those filing electronically do not need to make a paper filing.

36. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. RM96–1–020.

37. Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Website at *www.ferc.gov* and click on ''Make An E-Filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at 202–208–0258 or by e-mail to *efiling@ferc.fed.us.* Comments should not be submitted to the e-mail address.

38. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's Homepage using the RIMS link. User assistance for RIMS is available at 202–208–2222, or by e-mail to *rimsmaster@ferc.fed.us.*

39. **Document Availability**

40. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's homepage *(http://www.ferc.gov)* and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

41. From FERC's homepage on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

42. CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

43. CIPS can be accessed using the CIPS link or the Documents & Filing link. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

44. RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's homepage using the RIMS link or the Documents & Filing link. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

45. User assistance is available for RIMS, CIPS, and the Web site during normal business hours from our Help line at (202) 208–2222 (e-mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (e-mail to *public.referenceroom@ferc.fed.us*).

46. During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Web site are available. User assistance is also available.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission proposes to amend part 284, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. Section 284.12 is amended as follows:

§ 284.12 [Amended]

a. Paragraph (a) is removed and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively.

b. In newly redesignated paragraphs (a)(1)(i), (ii), (iii), and (v), revise all references to ''Version 1.4, August 31, 1999'' to read ''Version 1.5, August 18, 2001.''

c. In newly redesignated paragraph (a)(1)(iv), revise all references to ''Version 1.4, November 15, 1999'' to read ''Version 1.5, August 18, 2001.''

[FR Doc. 01–32004 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142299–01] [REG–209135–88]

RIN 1545–BA36 and 1545–AW92

Certain Transfers of Property to Regulated Investment Companies and Real Estate Investment Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations that apply to certain transactions or events that result in a Regulated Investment Company [RIC] or Real Estate Investment Trust [REIT] owning property that has a basis determined by reference to a C corporation's basis in the property. The text of the temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** serves as the text of this proposed regulation.

DATES: Written or electronic comments must be received by April 2, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU [REG–142299–01], room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU [REG–142299–01], Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC or sent to the IRS Internet site at: *http://www.irs.gov/taxregs/reglist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Lisa A. Fuller, (202) 622–7750; concerning submissions of comments, Donna Poindexter (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44

U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224. Comments on the collection of information should be received by March 4, 2002. Comments are specifically requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the collection will have practical utility; The accuracy of the estimated burden associated with the proposed collection of information (see below); How the quality, utility, and clarity of the information to be collected may be enhanced; How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §§ 1.337(d)–6T and 1.337(d)–7T. This information is necessary for the IRS to determine whether section 1374 treatment or deemed sale treatment is appropriate for the entity for which the regulation applies. The collection of information is required to obtain a benefit, i.e., to elect section 1374 treatment in lieu of deemed sale treatment in § 1.337(d)–6T, or to elect deemed sale treatment in lieu of section 1374 treatment in § 1.337(d)–7T. The likely respondents for deemed sale elections are C corporations. The likely respondents for section 1374 elections are RICs and REITs.

Section 1.337(d)–6T provides that a section 1374 election is made by filing a statement and attaching it to any Federal income tax return filed by the RIC or REIT on or before March 15, 2003, provided that the RIC or REIT has reported consistently with such election for all periods. Alternatively, a RIC or REIT can also make a section 1374 election by informing the IRS prior to January 2, 2002 of its intent to make a section 1374 election. Section 1.337(d)–7T provides that a deemed sale election is made by filing a statement and attaching it to the C corporation's Federal income tax return for the taxable year in which the deemed sale occurs.

Estimated total annual reporting burden: 70 hours.

Estimated average annual burden per respondent: 30 minutes.

Estimated number of respondents: 140.

Estimated annual frequency of responses: Once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** revise and add the Income Tax Regulations (26 CFR part 1) relating to section 337(d). The temporary regulations generally provide that, if property owned by a C corporation or property subject to section 1374 owned by a RIC, a REIT, or an S corporation becomes the property of a RIC or REIT by (1) the qualification of the C corporation as a RIC or REIT, or (2) certain transfers of property to a RIC or REIT, then the RIC or REIT will be subject either to section 1374 treatment or the C corporation will be subject to deemed sale treatment. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be made available for public inspection and copying. A public hearing may be scheduled. When a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Lisa A. Fuller of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Par. 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.337(d)–6 also issued under 26 U.S.C. 337.

Section 1.337(d)–7 also issued under 26 U.S.C. 337. * * *

Par. 2. Sections 1.337(d)–6 and 1.337(d)–7 are added to read as follows:

§ 1.337(d)–6 New transitional rules imposing tax on property owned by a C corporation that becomes property of a RIC or REIT.

[The text of proposed § 1.337(d)–6 is the same as the text of § 1.337(d)–6T published elsewhere in this issue of the **Federal Register**.]

§ 1.337(d)–7 Tax on property owned by a C corporation that becomes property of a RIC or REIT.

[The text of proposed § 1.337(d)–7 is the same as the text of § 1.337(d)–7T published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 01–31968 Filed 12–31–01; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 252–312b; FRL–7118–2]

Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District (MDAQMD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Mojave Desert Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) emissions from cement kilns. We are proposing to approve the local rule to regulate these emission sources under the Clean Air Act as amended in 1990.

DATES: Any comments on this proposal must arrive by February 1, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations: California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812. Mojave Desert AQMD, 14306 Park Avenue, Victorville, CA 92392–2310

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: This proposal addresses the local rule: MDAQMD Rule 1161. In the Rules and Regulations section of this **Federal Register,** we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: November 29, 2001.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 01–32100 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 67, No. 1

Wednesday, January 2, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice, renewal of charter, and request for nominations.

SUMMARY: The Secretary of Agriculture intends to renew the charter of the Lake Tahoe Federal Advisory Committee, chartered under the Federal Advisory Committee Act, to provide advice to the Secretary of Agriculture on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region. Nominations of persons to serve on the Committee are invited.

DATES: Nominations for membership on the Committee must be received in writing by February 1, 2002.

ADDRESSES: Send nominations and applications with telephone numbers for membership on the Committee to: FACA Nomination, Lake Tahoe Basin Management Unit, 870 Emerald Bay Road, South Lake Tahoe, California 96150.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson, Forest Supervisor, or Jeannie Stafford, Environmental Improvement Program and Partnership Liaison, Lake Tahoe Basin Management Unit, telephone (530) 573–2773.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture intends to renew the charter of the Lake Tahoe Basin Federal Advisory Committee. The purpose of the Committee is to provide advice to the Secretary of Agriculture on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Basin and other matters raised by the Secretary.

The Secretary has determined that the work of the Committee is in the public interest and relevant to the duties of the Department of Agriculture.

The Committee will meet on a quarterly basis, conducting public meetings to discuss management strategies, gather information and review federal agency accomplishments, and prepare a progress report every six months for submission to regional federal executives. Representatives will be selected from the following sectors: (1) Gaming, (2) environmental, (3) national environmental, (4) ski resorts, (5) North Shore economic/recreation, (6) South Shore economic/recreation, (7) resort associations, (8) education, (9) property rights advocates, (10) member-at-large, (11) member-at-large, (12) science and research, (13) local government, (14) Washoe Tribe, (15) State of California, (16) State of Nevada, (17) Tahoe Regional Planning Agency, (18) labor, (19) transportation, and (20) member-at-large. Nominations to the Committee should describe and document the proposed member's qualifications for membership on the Lake Tahoe Basin Advisory Committee. The Committee Chair will be recommended by the Committee and approved by the Secretary. Vacancies on the Committee will be filled in the manner in which the original appointment was made.

Appointments to the Committee will be made by the Secretary of Agriculture. Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include to the extent practicable individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

Dated: December 21, 2001.

Maribeth Gustafson,

Acting Forest Supervisor.

[FR Doc. 01–32138 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Deep Management Project, Colville National Forest, Stevens County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) on a proposal to conduct vegetation and road management, and implement riparian and wetlands management. The Proposed Action will be in compliance with the 1988 Colville National Forest Land and Resource Management Plan (Forest Plan) as amended, which provides the overall guidance for management of this area. The Proposed Action is within portions of the South Deep Creek, Little Smackout Creek, Meadow Creek, Rocky Creek, Kolle Creek, Clinton Creek, Rogers Creek, Kenny Creek, and Scott Creek subwatersheds on the Three Rivers Ranger District and scheduled for implementation in fiscal year 2003. The Colville National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may be able to participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis should be postmarked by February 1, 2002.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Sherri Schwenke, District Range, 255 West 11th, Kettle Falls, Washington, 99141. Comments may also be sent by FAX (509–738–7701). Include your name and mailing address with your comments so documents pertaining to this project may be mailed to you.

FOR FURTHER INFORMATION CONTACT: Questions about the Proposed Action and EIS should be directed to Sherri Schwenke, District Ranger, or to Tom Pawley, Planning Assistant, 255 West 11th Ave, Kettle Falls, Washington 99141 (phone: 509–738–7700).

SUPPLEMENTARY INFORMATION: The Proposed Action includes vegetation management using commercial and precommercial thinning on approximately 6,100 acres. Prescribed Fire may be applied on up to 6,500 acres. The road management projects will include local governments and adjacent landowners in the evaluation and development of a road strategy for these drainages. Part of that strategy will include both building and closing roads.

This proposal includes construction of approximately 19 miles of new roads. Research studies are proposed as a part of the South Deep Management Project in conjunction with the University of Washington, Washington State University, the University of Idaho, and the U.S. Forest Service Pacific Northwest Research Station. Studies concerning soil compaction, erosion, sedimentation resulting from active stream corridor treatments, silviculture, harvesting systems, and use of a computerized landscape management system are included in the project design.

The project would be located approximately 15 miles northeast of Colville, Washington, along the Aladdin Highway. The South Deep Management Project is proposed within the South Deep Creek, Little Smackout Creek, Meadow Creek, Rocky Creek, Kolle Creek, Clinton Creek, Rogers Creek, Kenny Creek, and Scott Creek subwatershed on the Three Rivers Ranger District. This analysis will evaluate a range of alternatives for implementation of the project activities. The area being analyzed is approximately 38,300 acres, of which 29,740 acres are National Forest System lands. The other ownership areas are included only for analysis of effects. The project area does not include any wilderness, RARE II, or other inventoried roadless land.

The preliminary issues that have been identified include: water quality and watershed restoration; forest stand density; uses of unroaded areas; forest road management and maintenance; and soil stabilization. A range of alternatives will be considered, including a no-action alternative

Initial scoping began in October, 1998. The scoping process will include the following: identify and clarify issues; identify key issues to be analyzed in depth; explore alternatives based on themes which will be derived from issues recognized during scoping activities; and identify potential environmental effects of the Proposed Action and alternatives. The Forest Service is seeking information, comments, and assistance from other agencies, organizations, Indian Tribes, and individuals who may be interested in or affected by the Proposed Action. This input will be used in preparation of the draft EIS. Your comments are appreciated throughout the analysis process.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered, however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS is to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September, 2002. The EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, Indian Tribes, and members of the public for their review and comment.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*;, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is scheduled to be available by December, 2002. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The Responsible Official is Colville National Forest Supervisor, Nora Rasure. She will decide which, if any, of the alternatives will be implemented. Her decision and rationale for the decision will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: December 17, 2001.

Nora B. Rasure,

Forest Supervisor.

[FR Doc. 01–32171 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trout-West Fuels Reduction Project, Pike and San Isabel National Forests, Teller, Douglas and El Paso Counties, Colorado

AGENCY: Forest Service, United States Department of Agriculture (USDA–FS).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA–FS will prepare an Environmental Impact Statement (EIS) to analyze and disclose the potential impacts of a site-specific proposal to reduce hazardous fuels on National Forest Lands in the Trout-West area. Management direction guiding the proposed project is contained within the 1984 Pike and San Isabel National Forests; Comanche and Cimarron National Grasslands Land and Resource Management Plan, and the 2000 National Fire Plan. The National Fire Plan identified Woodland Park, Colorado as an urban interface community at risk from catastrophic wildfire. The proposed project is intended to decrease the threat of

wildfire to Woodland Park and surrounding communities by reducing hazardous fuels within the urban interface and municipal watershed. Approximately 32,000 acres are proposed for treatment. This proposal is scheduled for implementation for ten years following the issuance of a Record of Decision (ROD), approximately 2003 to 2013.

DATES: Issues and comments concerning the Proposed Action must be *received* in writing before February 8, 2002. Correspondence should be addressed to Rochelle Desser, Trout West Team Leader, 201 Caves Highway, Cave Junction, OR 97523.

FOR FURTHER INFORMATION CONTACT: Rochelle Desser in Oregon at 541–592–4075 (*rdesser@fs.fed.us*) or Bob Post at Fairplay, Colorado, 719–836–2031, (*bpost@fs.fed.us*). Information about the project will be posted on the Pike-San Isabel National Forest Web site: (*http://www.fs.fed.us/r2/psicc/pp/*).

SUPPLEMENTARY INFORMATION: The Trout and West Creek Watersheds contain approximately 137,990 acres, located within all or parts of T.9S, R.68W; T.9S, R69W; T.9S, R70W; / T.10S, R.68W; T.10S, R69W; T.10S, R70W; / T.11S, R.68W; T.11S, R69W; T.11S, R.70W; T.11S, R.71W; / T.12S, R.68W; T.12S, R69W; T.12S, R.70W; T.12S, R.71W; / T.13S, R.69W; T.13S, R.70W. The analysis area boundary is bordered to the north by Devils Head Peak and a ridge between Ruby and Bridge Gulch, the eastern boundary is the Rampart Range Road, the southern boundary is bordered by Raspberry Mountain, and the western boundary is just west along County Road 51 to County Road 3 and following north to the west side of Sheepnose Mountain and Thunder Butte connecting at the confluence of Trout and West creek.

The Purpose and Need for the Proposed Action is to decrease the threat of wildfire to Woodland Park and neighboring communities by reducing hazardous fuels within the urban interface and adjacent National Forest lands. Project goals include promoting sustainable forest conditions; encouraging aspen regeneration; reducing risk of erosion and sediment to streams; maintaining municipal water quality; maintaining quality of life; and meeting Forest Plan Standards and Guidelines.

A mix of fuel treatments is proposed across seven project areas within the Trout and West Creek Watersheds including thinning, machine and hand slash piling, and prescribed burning. Private land including developed subdivisions occurs within the seven project areas, however only National Forest within these project areas is considered for treatment. These treatments are intended to reduce the canopy closure, continuity and overall biomass to create more moderate fire behavior if a wildfire were to start in the area.

Some of the trees that need to be cut may be sold as fuel wood, Christmas trees, post and poles, and/or saw logs; however, many areas are not expected to yield a commercial byproduct.

The EIS will analyze the potential effects of the Proposed Action on physical, biological, and social issues including ecosystem health, fuel loading and fire risk, soil and water, air quality, species viability, noxious weeds, cultural resources, and economics. Additional issues may be identified through the scoping process. The Forest Service will develop alternatives to respond to significant issues with the Proposed Action. A no action alternative will be considered.

Public participation is important throughout the analysis. The first time is during the scoping period, when the Forest Service invites input from Federal, State, and local agencies, Indian tribes, and other individuals who may be interested in or affected by the Proposed Action. Please refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environment Policy Act at 40 CFR 1501.7 for more information about scoping.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for review June 2002. A comment period for the Draft EIS will be 45 days from the date that the EPA published the Notice of Availability for appears in the **Federal Register**.

The Forest Service believes it is important to give Reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a Draft EIS must structure their participation in the environmental review process of the proposal so that it is specific, meaningful, and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 60-day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS. Please refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 for more information about how to comment on the upcoming EIS.

After the 60-day comment period ends on the draft EIS, comments will be considered and analyzed by the Agency in preparing the final EIS. The final EIS is scheduled for completion by September 2002. In the final EIS, the Forest Service is required to respond to substantive comments and responses during the comment period.

The Responsible Official for this project is the Pike and San Isabel National Forests, Cimarron and Comanche National Grasslands National Forest Supervisor. The Responsible Official will document the decision and rationale in a Record of Decision (scheduled for November 2002). The Forest Service decision will be subject to appeal under regulations at 36 CFR 215.

Dated: December 10, 2001.

William A. Wood,

Deputy Forest Supervisor.

[FR Doc. 01–32140 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Southeast Washington Resource Advisory Committee (RAC) will meet on January 23, 2002 in Pomeroy, Washington. The purpose of the meeting is to meet as a Committee for the first time and to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on January 23, 2002 from 7 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the Forest Service office located at 71

West Main Street, Pomeroy, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: This will be the first meeting of the committee, and will focus on meeting other RAC members and becoming familiar with duties and responsibilities. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 19, 2001.

Jeff D. Blackwood,

Forest Supervisor.

[FR Doc. 01–32202 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–BH–M

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Columbia County Resource Advisory Committee (RAC) will meet on January 30, 2002 in Dayton, Washington. The purpose of the meeting is to meet as a Committee for the first time and to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on January 30, 2002 from 7 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the Youth Building located at the Columbia County Fairgrounds, Dayton, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: This will be the first meeting of the committee, and will focus on meeting other RAC members and becoming familiar with duties and responsibilities. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 20, 2001.

Jeff D. Blackwood,

Forest Supervisor.

[FR Doc. 01–32203 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–BH–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on January 29, 2002 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on January 29, 2002 from 6 to 8 p.m.

ADDRESSES: The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Suite B, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *1chapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: This will be the second meeting of the committee, and will focus on establishing meeting norms and committee operating guidelines, as well as the process for selecting Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 21, 2001.

S.E. ''Lou'' Woltering,

Forest Supervisor.

[FR Doc. 01–32136 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on February 5, 2002 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on February 5, 2002 from 6 to 8 p.m.

ADDRESSES: The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Suite B, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail:*lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will focus on developing the overall strategy for selecting Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 21, 2001.

S.E. ''Lou'' Woltering,

Forest Supervisor.

[FR Doc. 01–32137 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on January 25, 2002, at the South Lake Tahoe City Council Chambers, 1052 Tata Lane, South Lake Tahoe, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held January 25, 2002, beginning at 9 a.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at the South Lake Tahoe City Council Chambers, 1052 Tata Lane, South Lake Tahoe, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit,

Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committees. Items to be covered on the agenda include a review of the Sierra Nevada Forest Plan Amendment, Success of Committee advice, Air Resources Board presentation, and update by HUD on the Chodo project, a long term urban lot strategy, status of the Forest Service land acquisition program at Lake Tahoe, and public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: December 21, 2001.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 01–32139 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Rouge/Umpqua Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Rogue/Umpqua Resource Advisory Committee (RAC) will meet on Wednesday, January 30, and Thursday, January 31, 2002. The meeting is scheduled to begin at 9:30 a.m. on January 30, and at 8:30 a.m. on January 31. Both meetings will conclude at approximately 4:00 p.m. The meetings will be held at the Grants Pass Inn and Suites; 243 NE Morgan Lane, Grants Pass, Oregon; (541) 472–1808. The tentative agenda for January 30 includes: (1) FACA Overview; (2) Roles and Responsibilities for Advisory Committees; (3) Timelines for projects related to the Secure Rural Schools and Community Self-Determination Act of 2000; (4) Election of RAC chairperson; and (5) Public Forum. The Public Forum is tentatively scheduled to begin at 3:20 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. The tentative agenda for January 31 includes: (1) Presentation of projects proposed by the Forest Service; (2) Public Forum. The Public Forum is tentatively scheduled to begin at 3:45 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the January 30 and 31 meetings by sending them to Designated Federal Official Jim Caplan at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Jim Caplan; Umpqua National Forest; PO Box 1008, Roseburg, Oregon 97470; (541) 957–3200.

Dated: December 21, 2001.

Richard Sowa,

Acting Forest Supervisor, Umpqua National Forest.

[FR Doc. 01–32141 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on January 28, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on January 28, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Public Utilities District Conference Room, 26 Ponderosa Lane, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, PO Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. E-mail: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The focus of the meeting is to continue the development of an overall strategy for selecting Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 21, 2001.

S.E. ''Lou'' Woltering,

Forest Supervisor.

[FR Doc. 01–32134 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on February 4, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on February 4, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Public Utilities District Conference Room, 26 Ponderosa Lane, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, PO Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. E-mail: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will focus on selecting Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 21, 2001.

S.E. 'Lou' Woltering,

Forest Supervisor.

[FR Doc. 01–32135 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place

in Washington, DC on Monday, Tuesday, and Wednesday, January 7–9, 2002, at the times and location noted below.

DATES: The schedule of events is as follows:

Monday, January 7, 2002

11 a.m.–Noon. Ad Hoc Committee—Public Rights-of-Way (Closed Meeting).
1:30 p.m.–5 p.m. Ad Hoc Committee—Public Rights-of-Way (Closed Meeting).

Tuesday, January 8, 2002

9:30 a.m.–10:30 a.m. Committee of the Whole—Recreation Facilities Final Rule (Closed Meeting).
10:30 a.m.–Noon. Technical Programs Committee.
1:30 p.m.–5 p.m. Ad Hoc Committee—Passenger Vessels (Closed Meeting).

Wednesday, January 9, 2002

9 a.m.–10:30 a.m. Planning and Budget Committee.
10:30 a.m.–Noon. Executive Committee.
1:30 p.m.–3 p.m. Board Meeting.

ADDRESSES: The meetings will be held at the Marriott at Metro Center Hotel, 775 12th Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434, extension 113 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items.

Open Meeting

- Executive Director's Report.
- Approval of the Minutes of the March 7, and May 9, 2001 Board Meetings.
- Technical Programs Committee: Construction tolerances, and on-going research and technical assistance projects.
- Planning and Budget Committee: Budget spending plan for fiscal year 2002; fiscal year 2003; and out-of-town meetings.
- Executive Committee: Executive Director's report; and nominating committee.

Closed Meeting

- Ad Hoc Committee on Public Rights-of-Way.
- Committee of the Whole; Recreation Facilities.
- Ad Hoc Committee on Passenger Vessels.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

David M. Capozzi,

Director, Office of Technical and Information Services.

[FR Doc. 01–32235 Filed 12–31–01; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2001) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than the last day of January 2002, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period
Antidumping Duty Proceedings Period	
Brazil:	
Brass Sheet and Strip, A–351–603	1/1/01–12/31/01
Stainless Steel Wire Rod, A–351–819	1/1/01–12/31/01
Canada: Brass Sheet and Strip, A–122–601	1/1/01–12/31/01
France:	
Anhydrous Sodium Metasilicate (ASM), A–427–098	1/1/01–12/31/01
Stainless Steel Wire Rods, A–427–811	1/1/01–12/31/01
Taiwan: Stainless Steel Cooking Ware, A–583–603	1/1/01–12/31/01
The People's Republic of China: Potassium Permanganate, A–570–001	1/1/01–12/31/01
The Republic of Korea: Stainless Steel Cooking Ware, A–580–601	1/1/01—12/31/01
Countervailing Duty Proceedings	
Brazil: Brass Sheet and Strip, C–351–604	1/1/01—12/31/01
Taiwan: Stainless Steel Cooking Ware, C–583–604	1/1/01—12/31/01
The Republic of Korea: Stainless Steel Cooking Ware, C–580–602	1/1/01—12/31/01
Suspension Agreements	
Japan: Sodium Azide, A–588–839	1/1/01—12/31/01

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department changed its requirements for requesting reviews for countervailing duty orders. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the

interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of January 2002. If the Department does not receive, by the last day of January 2002, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 19, 2001.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 01–31838 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Initiation of Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of five-year (''Sunset'') reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of the antidumping duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* covering the same antidumping duty orders.

FOR FURTHER INFORMATION CONTACT: James P. Maeder, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–3330 or (202) 482–5050, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

The Applicable Statue

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the ''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department'') regulations are to 19 CFR part 351 (2001). Pursuant to sections 751(c) and 752 of the Act, an antidumping (''AD'') or countervailing duty (''CVD'') order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for conducting sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Background

Initiation of Reviews

In accordance with 19 CFR 351.218 we are initiating sunset reviews of the following antidumping duty orders:

DOC Case No.	ITC Case No.	Country	Product
A–570–844	731–TA–741	China	Melamine Institutional Dinnerware
A–560–801	731–TA–742	Indonesia	Melamine Institutional Dinnerware
A–583–825	731–TA–743	Taiwan	Melamine Institutional Dinnerware

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*i.e.,* previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's ''Sunset'' Internet website at the following address: *http://ia.ita.doc.gov/sunset*

All submissions in these sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset website for any updates to the service lists before filing any submissions. The Department will make additions to and/or deletions from the service lists provided on the sunset website based on notifications from parties and participation in these reviews. Specifically, the Department will delete from the service lists all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset reviews. The

Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties

Domestic interested parties (defined in 19 CFR 351.102) wishing to participate in these sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the sunset reviews must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: December 18, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–32245 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–DS–P

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation, 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–046]

Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review.

SUMMARY: On November 21, 2001, the Department of Commerce (the Department) published a notice of initiation and preliminary results of a changed circumstances review of the antidumping duty finding on polychloroprene rubber from Japan. *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 66 FR 58436 (November 21, 2001) (*Preliminary Results*). We have now completed that review. For these final results, as in the *Preliminary Results*, we have determined that the restructured manufacturing and marketing joint ventures, Showa DDE Manufacturing KK (SDEM) and DDE Japan Kabushiki Kaisha (DDE Japan), are the successor-in-interest companies to Dupont Showa Denko (SDP) and its predecessor, Showa Neoprene, for purposes of determining antidumping liability in this proceeding.

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Tom Futtner, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6320 or (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION

The Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the regulations of the Department are to 19 CFR part 351 (2001).

Background

In a letter dated September 27, 2001, DuPont Dow Elastomers L.L.C. (Dupont Dow) and DDE Japan advised the Department that in 1998, SDP was restructured. The production portion of SDP was renamed SDEM. Further, the marketing end of SDP's business was separated from SDEM and renamed DDE Japan. According to Dupont Dow and DDE Japan, these entities were renamed to reflect Dupont Dow's participation in the joint ventures and to make the companies more globally competitive. Nevertheless, like SDP and similar to Showa Neoprene, the two firms, SDEM and DDE Japan, remained jointly owned ventures of Dupont Dow and Showa Denko KK.

On November 21, 2001, the Department published a notice of initiation and preliminary results of a changed circumstances review of the antidumping duty finding on polychloroprene rubber from Japan. *See Preliminary Results.* Interested parties were invited to comment on the preliminary results. On December 11, 2001, Dupont Dow Elastomers L.L.C. and DDE Japan Kabushiki Kaisha submitted comments. *See* Comments section below.

Scope of Review

Imports covered by this review are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.42.00, 4002.49.00, 4003.00.00, 4462.15.21 and 4462.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS item numbers are provided for convenience and for U.S. Customs Service purposes. The written descriptions remain dispositive.

Successorship

In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (Canadian Brass). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel:*

Final Results of Changed Circumstances Review, 59 FR 6944, 6945 (February 14, 1994) and *Canadian Brass*, 57 FR 20460. Therefore, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company essentially operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

We have examined the information provided by Dupont Dow and DDE Japan in their September 27, 2001 letter and determined that SDEM and DDE Japan are the successor-in-interest companies to SDP and its predecessor, Showa Neoprene. The management, production facilities, supplier relationships, sales facilities and customer base are essentially unchanged from those of SDP, and before that, Showa Neoprene. Therefore, we determine that the new joint venture entities essentially operate in the same manner as the predecessor companies of SDP and Showa Neoprene.

Final Results of Review

Based on our analysis in the *Preliminary Results*, we find that effective January 1, 1998, the restructured manufacturing and marketing joint ventures, SDEM and DDE Japan, are the successor-in-interest companies to Dupont Showa Denko (SDP) and its predecessor, Showa Neoprene. Further, SDEM and DDE Japan should be given the same antidumping duty treatment as SDP and its predecessor, Showa Neoprene, *i.e.,* zero percent antidumping duty cash deposit rate.

Comment: Successorship Effective Date

DuPont Dow and DDE Japan state that the final determination should explicitly indicate that, according to the facts on the record, SDEM and DDE Japan became the successor-in-interest companies to SDP and its predecessor, Showa Neoprene, effective January 1, 1998. *Department's Position*: We agree with DuPont Dow and DDE Japan and the effective date of January 1, 1998 is reflected in the Final Results of Review section below.

Cash Deposit

The cash deposit determination from this changed circumstances review will apply to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. This deposit rate shall remain in effect until publication of the final results of the next relevant administrative review. We will instruct the U.S. Customs Service accordingly.

Notification

This notice also serves as a final reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to timely notify the Department in writing of the return/destruction of APO material is a sanctionable violation.

We are issuing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and Sec. 351.216 of the Department's regulations.

Dated: December 21, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–32244 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Notice of Extension of Time Limit for Preliminary Results of Antidumping New Shipper Review: Silicon Metal From the People's Republic of China

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Maureen Flannery, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington DC 20230; telephone: (202) 482–5255 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351 (2000).

Background

In accordance with 19 CFR 351.213(b)(2), on June 29, 2001, the Department received the timely and properly filed June 28, 2001 request from Groupstars Chemical Company, Ltd., that we conduct a new shipper review of its sales of silicon metal. On July 31, 2001, the Department initiated a new shipper review of the antidumping duty order on silicon metal for the period of review (POR) of June 1, 2000 through May 31, 2001 (66 FR 41508).

Extension of Time Limit for Preliminary Results

Section 351.214(i)(1) of the Department's regulations requires the Department to issue preliminary results of a new shipper review within 180 days of the date of initiation. However, if the Secretary concludes that a new shipper review is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days under section 351.214(i)(2) of the Department's regulations. Because of the problems the respondent has encountered in meeting the Department's filing requirements and the resultant delay to the analysis and verification, we find this review to be extraordinarily complicated.

Therefore, in accordance with section 351.214(i)(2) of the regulations, the Department is extending the 180-day time limit to 300 days. Since the 300th day falls on a federal holiday, the due date for the preliminary results is now the next business day, May 28, 2002. The final results will continue to be due 90 days after the date of issuance of the preliminary results.

Dated: December 20, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 01–32248 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Amended Final Results of the Fourth Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amendment of final results of Countervailing Duty Administrative Review.

SUMMARY: On December 12, 2001, the Department of Commerce published in the **Federal Register** its final results of the fourth administrative review of the countervailing duty order on certain pasta from Italy for the period January

1 through December 31, 1999 (66 FR 64214). On December 10, 2001, we received a timely filed ministerial error allegation. Based on our analysis of this information, the Department of Commerce has revised the net subsidy rate for N. Puglisi & F. Industria Paste Alimentari S.p.A.

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Meg Weems or Craig Matney, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2613 or 482–1778, respectively.

Corrections

N. Puglisi & F. Industria Paste Alimentari S.p.A. (''Puglisi'')

On December 10, 2001, respondent Puglisi timely filed a ministerial error allegation. Puglisi states that, with respect to a Law 64/86 industrial development loan (''IDL''), the Department of Commerce (''the Department'') failed to deduct loan guarantee payments from the gross loan subsidy received by Puglisi during the period of review, resulting in a clerical error. Puglisi further explains that the Department added the loan guarantee payments to the ''total amount of interest and fee payments made'' and then again added the loan guarantee payments to the ''total benchmark interest and fees,'' thereby nullifying the deduction of these fees from the countervailable subsidy. Puglisi suggests that the clerical error be corrected by either not including the annual fee payments in the ''benchmark interest and fee amounts,'' or by deducting the annual fee payments from the gross countervailable subsidy for the loan. The petitioner has not commented on this ministerial error allegation.

We agree with Puglisi that the Department miscalculated the duty rate for one of Puglisi's Law 64/86 IDLs by inadvertently nullifying the deduction of the loan guarantee fees from the countervailable subsidy. We have corrected this error for the amended final results by deducting the annual fee payments from the ''total interest and fee payments made,'' while excluding them from the ''benchmark interest and fee amounts.''

In the final results, we specified a total duty rate of 7.18 percent for Puglisi. In calculating this rate, we erroneously calculated the subsidy rate for Puglisi's Law 64/86 IDL to be 0.14 percent. The Law 64/86 IDL subsidy rate should have been 0.08 percent.

Amended Final Results of Review

Pursuant to the Department's regulations at 19 CFR 351.224(e), we correct the *ad valorem* rate for Puglisi to be 7.12 percent.

The Department will instruct the Customs Service (''Customs'') to assess countervailing duties on all appropriate entries on or after January 1, 1999, and on or before December 31, 1999. The Department will issue liquidation instructions directly to Customs. The amended cash deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This amendment to the final results of the countervailing duty administrative review is in accordance with section 751(a)(1) of the Tariff Act, as amended, (19 U.S.C. 1675(a)(1), 19 CFR 351.213, and 19 CFR 351.221(b)(5)).

Dated: December 26, 2001.

Richard W. Moreland,

Acting Assistant Secretary for, Import Administration.

[FR Doc. 01–32247 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122701A]

Proposed Information Collection; Comment Request; Deep Seabed Mining Regulations for Exploration Licenses

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 4, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joseph P. Flanagan at 301-713-3155, ext. 201 (or via Internet at joseph.flanagan@noaa.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA regulations at 15 CFR 970 govern the issuing and monitoring of exploration licenses under the Deep Seabed Hard Mineral Resources Act. Persons seeking a license must submit certain information that allows NOAA to ensure the applicant meets the standards of the Act. Persons with licenses are required to conduct monitoring and make reports, and they may request revisions to or transfers of licenses.

II. Method of Collection

Paper submissions are used.

III. Data

OMB Number: 0648-0145.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2.

Estimated Time Per Response: 2000-4000 hours per application (no applications are expected) and 20 hours per report.

Estimated Total Annual Burden Hours: 40.

Estimated Total Annual Cost to Public: $120.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 21, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–32239 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072401A]

Small Takes of Marine Mammals Incidental to Specified Activities; Taking of Marine Mammals Incidental to Power Plant Operations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a renewal of a Letter of Authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that a Letter of Authorization (LOA) to unintentionally take small numbers of pinnipeds incidental to routine operations of the Seabrook Station nuclear power plant, Seabrook, NH (Seabrook Station) has been issued to the North Atlantic Energy Service Corporation (North Atlantic).

DATES: Effective from October 19, 2001, until June 26, 2002.

ADDRESSES: A copy of the application, Environmental Assessment, LOA, and other materials used in this document are available by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Simona Perry Roberts, (301) 713–2322, ext 106; Jonathan Wendland, (978) 281–9146.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible method of taking and the requirements pertaining to the monitoring and reporting of such taking.

Five-year regulations (effective from July 1, 1999 through June 30, 2004), including mitigation, monitoring, and reporting requirements, for the incidental taking of harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*), and hooded seals (*Cystophora cristata*) by U.S. citizens engaged in power plant operations at the Seabrook Station nuclear power plant, Seabrook, NH are set out in 50 CFR 216.130 through.137.

Summary of Request

NMFS received a request from North Atlantic in June 2001 for renewal of their LOA, which expired on July 2, 2000, to lethally take 20 harbor seals and 4 of any combination of gray, harp, and hooded seals incidental to power plant operations at Seabrook Station.

Permissible Methods of Taking

According to 50 CFR 216.132, LOAs issued to North Atlantic for Seabrook Station authorize the incidental, but not intentional, take of harbor, gray, harp, and hooded seals in the course of operating the station's intake cooling water system. For a more complete description of the intake systems utilized at Seabrook Station please refer to the final rule (64 FR 28114, May 25, 1999).

Mitigation Requirements

NMFS, in the May 25, 1999, final rule (64 FR 28114), allowed North Atlantic to use the 5-year authorization period (July 1, 1999 through June 30, 2004) to fully explore any feasible mitigation methods, and if methods were not found to be suitable, to explore and undertake, in conjunction with NMFS, steps to promote the conservation of the population of Gulf of Maine seals as a whole.

Monitoring and Reporting Requirements

Monitoring under the renewed LOA must include: (1) twice daily visual inspection of the circulating water and service water forebays; (2) daily inspections of the intake transition structure from April 1 through December 1, unless weather conditions prevent safe access to the structure; (3) screen washings once per day during the peak months of seal takes and twice a week during non-peak months of seal takes; and, (4) examination of the screen wash debris to determine if any seal remains are present.

Seal takes must be reported to NMFS through both oral and written notification. NMFS must be notified via telephone by the close of business on the next day following the discovery of any marine mammal or marine mammal parts. Written notification to NMFS must be made within 30 days and must include the results of any examinations conducted by qualified members of the Marine Mammal Stranding Network as well as any other information relating to the take.

National Environmental Policy Act

NMFS issued an Environmental Assessment (EA) in 1998, in conjunction with the notice of proposed authorization. As a result of the findings made in the EA, NMFS concluded that implementation of either the preferred alternative or other identified alternatives would not have a significant impact on the human environment. Therefore, preparation of an environmental impact statement on these actions was not required by Section 102(2) of the National Environmental Policy Act or its implementing regulations. Copies of the 1998 EA and the Finding of No Significant Impact are available upon request (see **ADDRESSES**).

Determinations

NMFS has determined (see 64 FR 28114, May 25, 1999) that the taking of up to 20 harbor seals and 4 of any combination of gray, harp, and hooded seals, annually from July 1, 1999, through June 30, 2004, will have no more than a negligible impact (as defined in 50 CFR 216.3) on these stocks of marine mammals. The best scientific information available indicates that since 1981, the Western North Atlantic harbor seal stock has had an average annual rate of increase of 4.2 percent (Waring *et al.*, 2000). In addition, the Western North Atlantic stocks of gray, harp, and hooded seals also appear to be increasing in abundance (Waring *et al.*, 1999, 2000). The small number of takes at Seabrook Station relative to current population estimates is unlikely to reduce the rate of population growth for any of these pinniped stocks.

According to North Atlantic reports received in NMFS' Northeast Region, no seals have been entrapped since the installation of Seal Deterrent Barriers in August 1999.

Authorization

In recognition of the timely receipt and acceptance of the reports required under 50 CFR 216.135 and a determination that the mitigation measures required pursuant to 50 CFR 216.134 and the LOA have been undertaken, NMFS issued an LOA to the North Atlantic Energy Services Corporation on June 26, 2001, for the taking of harbor seals, gray seals, harp seals, and hooded seals incidental to routine operations of the Seabrook Station nuclear power plant, provided the mitigation, monitoring, and reporting requirements described in 50 CFR 216.134 through 135 and in the LOA are undertaken.

Dated: December 20, 2001.

David Cottingham

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–32238 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121701C]

Endangered and Threatened Species; Amendment of Permit # 1291

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an amended application for a scientific research permit (1291); Request for comments.

SUMMARY: Notice is hereby given that NMFS has received an amended application for an ESA section 10(a)(1)(A) scientific research permit from the U.S. Geological Survey at Cook, WA (USGS).

DATES: Written comments on the amended permit application must be received no later than 5pm Pacific standard time on February 1, 2002.

ADDRESSES: Written comments on the application should be sent to Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments may also be sent via fax to 503–230–5435. Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: For permit 1291: Robert Koch, Portland, OR (ph: 503-230-5424, Fax: 503–230–5435, e-mail: robert.koch@noaa.gov).

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following species and evolutionary significant units (ESU's) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened lower Columbia River (LCR).

Steelhead (*O. mykiss):* threatened LCR.

Amended Application Received

Notice was published on February 21, 2001 (66 FR 11002) that the Columbia River Research Laboratory, USGS applied for a 5–year scientific research permit (1291) for annual takes of ESA-listed salmon and steelhead juveniles associated with a scientific research project at John Day, The Dalles, and Bonneville Dams on the lower Columbia River in the Pacific Northwest. The purpose of the research is to monitor juvenile fish movement, distribution, behavior, and survival from John Day Dam downstream past Bonneville Dam using radiotelemetry technology. The research will benefit ESA-listed fish species by providing information on spill effectiveness, forebay residence times, and guidance efficiency under various flow regimes that will allow Federal resource managers to make adjustments to bypass/collection structures to optimize downriver migrant survival at the hydropower projects. NMFS has received an amended application from USGS to include annual takes of juvenile, threatened, LCR chinook salmon and juvenile, threatened, LCR steelhead associated with the fish sampling at Bonneville Dam. ESA-listed salmon and steelhead juveniles are proposed to be obtained by Smolt Monitoring Program personnel at Bonneville Dam, handled, and released or implanted with radio transmitters, transported, held for as long as 24 hours, released, and tracked electronically. Smolt Monitoring Program personnel are authorized to collect ESA-listed juvenile fish under a separate take authorization. Based on the above average spawning success this year, the estimates of total out-migrants for LCR chinook and LCR steelhead are expected to exceed 300,000 juveniles. The indirect mortalities of 162 ESA-listed juvenile salmon and 11 steelhead juveniles associated with the research will not impede recovery of the species. In fact, it should assist in recovery planning by providing information on how juveniles migrate through hydropower systems.

Dated: December 21, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–32241 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121701B]

Permits; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of periodic need for break-bulk refrigerated cargo vessels.

SUMMARY: NMFS publishes for public review and comment information provided by U.S. joint venture (JV) partners regarding their need for break-bulk refrigerated cargo vessels to support approved foreign fishing operations in the U.S. Exclusive Economic Zone (EEZ).

ADDRESSES: Comments may be submitted to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2276.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson-Stevens Act), any person may submit an application requesting a permit authorizing a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the EEZ or, with the concurrence of a State, within the boundaries of that State, to a point outside the United States.

This notice concerns the fact that potential U.S. JV partners have reported that they will need to have a number of break-bulk refrigerated cargo vessels permitted under section 204(d) of the Magnuson-Stevens Act to support approved foreign fishing operations in the EEZ. The JV partners have reported that arrangements for such support vessels must generally be made on short notice immediately prior to the need for transport services. The U.S. JV partners have also reported that they are not aware of the availability of any U.S.-flag

break-bulk refrigerated cargo vessels and that it will therefore be necessary for them to employ foreign break-bulk refrigerated cargo vessels to support their operations.

In the interest of expediting the issuance of required permits and in accordance with section 204 (d)(3) of the Magnuson-Stevens Act, the U.S. JV partners have requested and received from the New England Fishery Management Council and the Mid-Atlantic Fishery Management Council, a general recommendation that any break-bulk refrigerated cargo vessels required to support approved foreign fishing operations in the EEZ be permitted under section 204 (d) of the Magnuson-Stevens Act.

In accordance with section 204 (d)(3)(D) of the Magnuson-Stevens Act, NMFS is notifying interested parties of the periodic need of the U.S. JV partners for break-bulk refrigerated cargo vessels to transship processed fishery products at-sea and transport the products to points outside the United States. Further information about the requirements of the U.S. JV partners is available from NMFS (See **ADDRESSES**). Owners or operators of vessels of the United States who purport to have vessels with adequate capacity to perform the required transportation at fair and reasonable rates should indicate their interest in doing so to NMFS (See **ADDRESSES**).

In consideration of the Councils' recommendation, the apparent lack of available U.S.-flag break-bulk refrigerated cargo vessels (as reported by the U.S. JV partners), and the requirement to process and issue on short notice permits requested in accordance with section 204 (d) of the Magnuson-Stevens Act, until an owner or operator of a vessel of the United States having adequate capacity to perform the required transportation at fair and reasonable rates is identified, NMFS intends to approve as expeditiously as possible all complete applications for 204 (d) transshipment permits submitted by U.S. JV partners in support of approved foreign fishing operations in the EEZ.

Dated: December 21, 2001.

Jonathan M. Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–32240 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 1, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 26, 2001.

John Tressler,

Leader, Regulatory Information Management Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for Grants Under the Minority Science and Engineering Improvement Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 200

Burden Hours: 8,000

Abstract: This Minority Science and Engineering Improvement Program application is designed to effect long-range improvement where enrollments are predominantly Alaska Native, American Indian, Blacks (not of Hispanic origin), Hispanics (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islanders or any combination of these.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–32158 Filed 12–31–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 1, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren.Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 26, 2001.

John Tressler,

Leader, Regulatory Information Management Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Extension.

Title: Lender's Application for Payment of Insurance Claim.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 1,804

Burden Hours: 487

Abstract: The ED Form 1207—Lender's Application for Payment of Insurance Claim is completed for each borrower for whom the lender is filing a Federal claim. Lenders must file for payment within 90 days of the default, depending on the type of claim filed.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–32159 Filed 12–31–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–035]

ANR Pipeline Company; Notice of Negotiated Rate Filing

December 26, 2001.

Take notice that on December 17, 2001, ANR Pipeline Company (ANR) tendered for filing and approval a Service Agreement between ANR and Duke Energy Fuels, L.P., pursuant to ANR's Rate Schedule FTS–1, and a related Negotiated Rate Letter Agreement. ANR requests that the Commission accept and approve the agreements to be effective December 15, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32190 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–8–001]

Metro Energy, L.L.C.; Notice of Filing

December 26, 2001.

Take notice that on December 14, 2001, Metro Energy, L.L.C. (Metro Energy), filed with the Federal Energy Regulatory Commission (Commission) an amendment to an application pursuant to section 203 of the Federal Power Act (16 U.S.C. 842b) and part 33 of the Commission's Regulations, originally filed on October 18, 2001 (Application). The Commission granted the authorizations requested in the Application by letter order dated November 16, 2001.

The purpose of this amendment is to reflect a change in one of the conditions stated in the Application and the Letter Order. The change, which affects the manner in which Metro Energy satisfies the regulation prong of the public interest test under Section 203 of the Federal Power Act and Section 33.2(g) of the Commission's Regulations, is that Metro Energy will not cancel its market-based rate tariff, and wishes to have the option to continue its authorization to operate as a wholesale power marketer after the transfer of ownership of the Project to the County.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to

determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: January 9, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32181 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3075–003]

Michigan Electric Transmission Company; Notice of Filing

December 26, 2001.

Take notice that on December 12, 2001, Michigan Electric Transmission Company (METC) tendered for filing the following tariff sheets as part of its FERC Electric Tariff, Original Volume No. 1 in compliance with the November 14, 2001 order issued in this proceeding. (The sheets make up the entirety of METC's pro forma Generator Interconnection Agreement, Tariff Sheets 125–168.)

Original Sheet Nos. 126A, 127A, 129A, 130A, 132A, 134A, 136A, 138, 141A, 143A, 146A, 150A, 152A, 154A, 155A and 159A, First Revised Sheet Nos. 125 through 135, 135A, 141, 142, 146 through 153, 153A, 155 through 166, Sub First Revised Sheet Nos. 139, 139A, 143 and 144, Second Revised Sheet Nos. 136 and 137, Second Sub Revised Sheet No. 137, Second Sub First Revised Sheet Nos. 140, 145, 154, 167 and 168, and Second Sub Original Sheet No. 145A.

The sheets are to become effective on September 19, 2001. Copies of the filing were served upon the Michigan Public Service Commission and upon those on the official service list in this proceeding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link.

Comment Date: January 4, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32182 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–137–000, ER00–2998–001, ER00–2999–001, ER00–3000–001, and ER00–3001–001]

Mohawk River Funding III, L.L.C.; Notice of Issuance of Order

December 26, 2001.

Mohawk River Funding III, L.L.C. (Mohawk River) filed with the Commission, in the above-docketed proceedings, a long-term purchase power agreement under which Mohawk River will sell wholesale electric power and energy at market-based rates to USGen New England, Inc. directly, at various delivery points in the New England Power Pool. Mohawk River also requested certain waivers and authorizations. In particular, Mohawk River requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Mohawk River. On December 18, 2001, the Commission issued an order that accepted Mohawk River's application for sales of power and energy at market-based rates (Order).

The Commission's December 18, 2001 Order granted Mohawk River's request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Mohawk River should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Mohawk River is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Mohawk River, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Mohawk River's issuances of securities or assumptions of liabilities....

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 17, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32183 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–581–000]

New England Power Pool; Notice of Filing

December 26, 2001.

Take notice that on December 21, 2001, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials (1) to implement alternative payment and financial assurance arrangements with Enron power Marketing, Inc. (EPMI), Enron energy Marketing Corp. (EEMC), and Enron Eneergy Service, Inc. (EESI) with respect to transactions occurring on and after December 21, 2001 and (2) to terminate immediately and automatically the participation by EPMI, EEMC and EESI, as the case may be, as members in NEPOOL should there be a failure to make a required payment under the filed arrangements. Those arrangements are defined in a term sheet that will be reflected in definitive Standstill Agreements which NEPOOL states will be submitted to the Commission. A December 21, 2001 effective date was requested for the arrangements.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOOL.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link.

Comment Date: January 4, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32184 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–194–009]

Niagara Mohawk Power Corporation; Notice of Filing

December 26, 2001.

Take notice that on December 12, 2001, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an amendment to its July 10, 2001 Compliance Filing in the above docket to supply additional information requested by the Federal Energy Regulatory Commission (Commission) in its November 7, 2001 letter Order in the above referenced proceeding.

Copies of the filing have been served on all parties listed on the official service list maintained by the Commission for this proceeding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link.

Comment Date: January 4, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32185 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–4–000]

Northwest Pipeline Corporation; Notice of Site Visit

December 26, 2001.

On January 8–10, 2002, the staff of the Office of Energy Projects (OEP) will conduct a site visit of Northwest Pipeline Corporation's (NWP) Evergreen Pipeline Project in Skagit, King, Pierce, Whatcom, Snohomish, and Lewis Counties, Washington. The site visit will start at the following dates and locations:

January 8—Sedro-Woolley Loop. Meet outside of 3-Rivers Inn Restaurant, 211 Central Ave, Sedro-Woolley, WA at 10:45 a.m.

January 9—Mt. Vernon Loop. Meet outside of 3-Rivers Inn Restaurant, 211 Central Ave, Sedro-Woolley, WA at 8 a.m.

January 10—Auburn Loop. Meet in Pepper Tree Inn Lobby, 401 8th Street S.W., Auburn, WA at 8 a.m.

Covington Loop. Meet at the Timberlane Homeowners Association, 26612–192 Ave, S.E., Covington, WA at 12:15 p.m.

Representatives of NWP will accompany the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation. For schedule changes and updates, contact the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Sectretary.

[FR Doc. 01–32180 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–230–002, *et al.*]

Alliant Energy Corporate Services, Inc., *et al.*; Electric Rate and Corporate Regulation Filings

December 21, 2001.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–230–002]

Take notice that on December 18, 2001, Alliant Energy Corporate Services, Inc., submitted to the Federal Energy Regulatory Commission (Commission) an updated market power analysis.

Comment date: January 8, 2002.

2. Progress Genco Ventures, LLC

[Docket No. ER01–2929–000 and ER01–2929–001]

Take notice that on November 30, 2002, Progress Genco Ventures, LLC tendered for filing a notice of withdrawal of its application for authorization to sell capacity, energy and ancillary services at market-based rates, filed on August 24, 2001, as amended on November 2, 2001, in the above-referenced docket.

Comment date: January 11, 2002.

3. Cinergy Services, Inc.

[Docket No. ER02–177–001]

Take notice that on December 14, 2001, Cinergy Services, Inc. (Services), The Cincinnati Gas & Electric Company (CG&E), PSI Energy, Inc. (PSI), and Cinergy Power Investments, Inc. (CPI) (collectively Applicants) filed with the Federal Energy Regulatory Commission (Commission) an Application for Various Approvals Under Section 205 of the FPA. This filing is a supplement to a larger package of interrelated filings and associated settlements in which Applicants requested Commission action by December 31, 2001.

Comment date: January 4, 2002.

4. Virginia Electric and Power Company

[Docket No. ER02–559–000]

Take notice that on December 17, 2001, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing with the Federal Energy Regulatory Commission (Commission) the following Service Agreements with Sempra Energy Trading Corporation (Transmission Customer):

1. Fifth Amended Service Agreement for Firm Point-to-Point Transmission Service designated Seventh Revised Service Agreement No. 253 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

2. Fifth Amended Service Agreement for Non-Firm Point-to-Point Transmission Service designated Seventh Revised Service Agreement No. 49 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Company's Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreements, Dominion Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff. The Company requests an effective date of November 15, 2001, the date the customer first requested service.

Copies of the filing were served upon Sempra Energy Trading Corporation, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: January 7, 2002.

5. Exelon Generation Company, LLC

[Docket No. ER02–560–000]

Take notice that on December 17, 2001, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and Bryan Texas Utilities, under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2.

Comment date: January 8, 2002.

6. Pacific Gas and Electric Company

[Docket No. ER02–561–000]

Take notice that on December 18, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing a Generator Special Facilities Agreement (GSFA) and a Generator Interconnection Agreement (GIA) between PG&E and GWF Energy LLC (GWF) (collectively Parties).

The GSFA permits PG&E to recover the ongoing costs associated with owning, operating and maintaining the Special Facilities. As detailed in the Special Facilities Agreement, PG&E proposes to charge GWF a monthly Cost of Ownership Charge equal to the rates for transmission-level, customer-financed facilities in PG&E's currently effective Electric Rule 2, as filed with the California Public Utilities Commission (CPUC). PG&E's currently effective rate of 0.31% for transmission-level, customer-financed Special Facilities is contained in the CPUC's Advice Letter 1960–G/1587–E, effective August 5, 1996, a copy of which is included as Attachment 3 of this filing. PG&E has requested certain waivers.

Copies of this filing have been served upon GWF, the California Independent System Operator Corporation and the CPUC.

Comment date: January 8, 2002.

7. Reliant Energy Osceola, LLC

[Docket No. ER02–473–000 and ER02–473–001]

Take notice that on December 4, 2001, Reliant Energy Osceola, LLC (Reliant Osceola) in Docket No. ER02–473–000 as amended on December 12, 2001 in Docket No. ER02–473–001 tendered for filing a Power Purchase Agreement between reliant Osceola and Seminole Electric Cooperative, Inc. (Seminole) as a customer under reliant Osceola's market-based tariff.

Reliant Osceola requests and effective date of December 1, 2001.

Comment date: January 2, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32179 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3074–002, et al.]

San Diego Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

December 26 2001.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in

accordance with Standard Paragraph E at the end of this notice.

1. San Diego Gas & Electric Company

[Docket No. ER01–3074–002]

Take notice that on December 6, 2001, San Diego Gas & Electric Company (SDG&E) tendered for filing documentation that support project costs and explains its use of an annual fix charge to calculate transmission revenues.

Comment date: January 7, 2002.

2. Entergy Nuclear Vermont Yankee, LLC

[Docket No. ER02–564–000]

Take notice that on December 19, 2001, Entergy Nuclear Vermont Yankee, LLC (Entergy Nuclear VY) tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act. Entergy Nuclear VY also tendered for filing a long-term power purchase agreement between Entergy Nuclear VY and Vermont Yankee Nuclear Power Corporation (VYNPC) for acceptance as a service agreement under Entergy Nuclear VY's proposed market-based rate tariff.

Copies of this filing were served upon VYNPC, the Vermont Public Service Board, the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Mississippi Public Service Commission, the Council of the City of New Orleans and the Texas Public Utility Commission.

Comment date: January 11, 2002.

3. Duke Energy Enterprise, LLC

[Docket No. ER02–565–000]

Take notice that on December 19, 2001, Duke Energy Enterprise, LLC (Duke Enterprise) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Enterprise seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Enterprise also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Duke Enterprise requests pursuant to Section 35.11 of the Commission's regulations that the Commission waive the 60-day minimum notice requirement under Section 35.3(a) of its regulations and grant an effective date for this application of February 14, 2002, the date on which Duke Enterprise anticipates commencing the sale of test energy.

Comment date: January 11, 2002.

4. Meriden Gas Turbines LLC

[Docket No. ER02–566–000]

On December 19, 2001, Meriden Gas Turbines LLC (Meriden) filed, under section 205 of the Federal Power Act (FPA), an application requesting that the Commission (1) Accept for filing its proposed market-based FERC Rate Schedule No. 1; (2) grant blanket authority to make market-based wholesale sales of capacity and energy under the FERC Rate Schedule No. 1; (3) grant authority to sell ancillary services at market-based rates within ISO New England Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.; and (4) grant such waivers and blanket authorizations as the Commission has granted in the past to other nonfranchised entities with market-based rate authority.

Comment date: January 11, 2002.

5. Consumers Energy Company

[Docket No. ER02–567–000]

Take notice that on December 19, 2001, Consumers Energy Company (Consumers) tendered for filing a Service Agreement with Duke Power, a division of Duke Energy Corporation, (Customer) under Consumers FERC Electric Tariff No. 9 for Market Based Sales. Consumers requested that the Agreement be allowed to become effective as of December 13, 2001.

Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Comment date: January 11, 2002.

6. Canal Electric Company

[Docket No. ER02–568–000]

Take notice that on December 20, 2001, Canal Electric Company tendered for filing the Eighth Amendment to the Power Contract between Canal Electric Company and Commonwealth Electric Company and Cambridge Electric Light Company, as well as revised tariff sheets to implement the Eighth Amendment, for effectiveness on January 1, 2002. The Eighth Amendment modifies the schedule of nuclear decommissioning expenses to reflect the schedule approved by the New Hampshire Nuclear decommissioning Financing Committee in its Final Report and Order issuedNovember 5, 2001.

Comment date: January 11, 2002.

7. New England Power Pool

[Docket No. ER02–569–000]

Take notice that on December 20, 2001, the New England Power Pool (NEPOOL) Participants Committee submitted the Eighty-First Agreement Amending New England Power Pool Agreement (the Eighty-First Agreement), which proposes to restate the existing Financial Assurance Policy for NEPOOL Members, which is Attachment L to the NEPOOL Tariff, and the Financial Assurance Policy for NEPOOL Non-Participant Transmission Customers, which is Attachment M to the NEPOOL Tariff. The Eighty-First Agreement also proposes minor, clarifying changes to Section 21.2(d) of the Restated NEPOOL Agreement. A January 21, 2002 effective date is requested for the revised Restated NEPOOL Agreement and NEPOOL Tariff sheets reflecting the changes proposed by the Eighty-First Agreement.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment date: January 11, 2002.

8. Allegheny Energy Service Corporationon behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER02–570–000]

Take notice that on December 20, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 152 to add one (1) new Customer to the Market Rate tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply requests a waiver of notice requirements for an effective date of December 1, 2001 for service to Morgan Stanley Capital Group, Inc. Confidential treatment of information in the Service Agreement has been requested. Copies of the filing have been provided to the customer.

Comment date: January 11, 2002.

9. RAMCO, Inc.

[Docket No. ER02–571–000]

Take notice that on December 19, 2001, RAMCO, Inc. (RAMCO) tendered for filing two service agreements for power sales with the California Independent System Operator for sales by RAMCO to the CAISO at market-based rates according to its FERC Electric Tariff, Original Volume No. 1.

Comment date: January 11, 2002.

10. Mountain View Power Partners, LLC

[Docket No. ER02–572–000]

Take notice that on December 19, 2001, Mountain View Power Partners, LLC (Mountain View) filed a Master Agreement (the Master Agreement) and a Confirmation

entered into thereunder (collectively, the ''Agreement'') for power sales with its affiliate, PG&E Energy Trading-Power, L.P. (PGET) as required by the Commission in its letter Order of February 9, 2001. See Mountain View Power Partners, LLC, Docket No. ER01–1336–000 (delegated letter order issued February 9, 2001) (Section 205 Letter Order). The Agreement commits Mountain View to sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff, Original Volume No. 1.

Comment date: January 11, 2002.

11. Mountain View Power Partners II, LLC

[Docket No. ER02–573–000]

Take notice that on December 19, 2001, Mountain View Power Partners II, LLC (Mountain View II) filed a Master Agreement (the Master Agreement) and a Confirmation entered into thereunder (collectively, the Agreement) for power sales with its affiliate, PG&E Energy Trading-Power, L.P. (PGET) as required by the Commission in its letter Order of April 16, 2001. Mountain View Power Partners II, LLC, Docket No. ER01–1336–000 (delegated letter order issued April 16, 2001) (Section 205 Letter Order). The Agreement commits Mountain View II to sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff, Original Volume No. 1.

Comment date: January 11, 2002.

12. Michigan Electric Transmission Company

[Docket No. ER02–574–000]

Take notice that on December 19, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Service Agreements for services associated with Network Integration Transmission Service with Sebewaing Light & Water Department and Thumb Electric Cooperative and for Firm and/or Non-Firm Point-to-Point Transmission Service with participants listed on the Commission's Service List.

Comment date: January 9, 2002.

13. American Electric Power Service Corporation

[Docket No. ER02–575–000]

Take notice that on December 19, 2001, American Electric Power Service Corporation (AEPSC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of Service Agreement No. 296 between AEPSC as agent for Indiana Michigan Power Company and Duke Energy Berrien, L.L.C. under American Electric Power Operating Companies' Open Access Transmission Tariff (OATT) pursuant to Section 35.15 of the Commission's regulations.

AEPSC requests an effective date of February 17, 2002 for the cancellation.

AEPSC served copies of the filing upon Duke Energy Berrien, L.L.C. c/o Duke Energy North America, LLC.

Comment date: January 9, 2002.

14. Appalachian Power Company

[Docket No. ER02–576–000]

Take notice that on December 19, 2001, Appalachian Power Company tendered for filing a Letter Agreement with Mirant Danville, L.L.C.

AEP requests an effective date of February 17, 2002.

Copies of Appalachian Power Company's filing have been served upon the Virginia State Corporation Commission.

Comment date: January 9, 2002.

15. Appalachian Power Company

[Docket No. ER02–577–000]

Take notice that on December 19, 2001, Appalachian Power Company tendered for filing a Letter Agreement with Allegheny Energy Supply Company, L.L.C.

AEP requests an effective date of February 17, 2002.

Copies of Appalachian Power Company's filing have been served upon the Virginia State Corporation Commission.

Comment date: January 9, 2002.

16. Carolina Power & Light Company

[Docket No. ER02–578–000]

Take notice that on December 19, 2001, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement between CP&L and the following eligible buyer, Oglethorpe Power Corporation. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 5.

CP&L requests an effective date of December 3, 2001 for this Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: January 9, 2002.

17. Capital District Energy Center Cogeneration Associates

[Docket No. ER02–579–000]

Take notice that on December 19, 2001, Capital District Energy Center Cogeneration Associates (CDECCA), filed with the Federal Energy Regulatory Commission (Commission) an application for approval of its initial tariff (FERC Electric Tariff Original Volume No. 1), and for blanket approval for market-based rates pursuant to Part 35 of the Commission's regulations.

CDECCA is a general partnership that owns and operates a 56-MW generating plant located in Hartford, Connecticut.

Comment date: January 11, 2002.

18. Pawtucket Power Associates Limited Partnership

[Docket No. ER02–580–000]

Take notice that on December 19, 2001, Pawtucket Power Associates Limited Partnership (Pawtucket), filed with the Federal Energy Regulatory Commission an application for approval of its initial tariff (FERC Electric Tariff Original Volume No. 1), and for blanket approval for market-based rates pursuant to Part 35 of the Commission's regulations.

Pawtucket is a limited partnership formed under the laws of Massachusetts. Pawtucket owns and operates a 68-MW generating plant located in Pawtucket, Rhode Island.

Comment date: January 9, 2002.

19. Fitchburg Gas and Electric Light Company

[Docket No. ER02–582–000]

Take notice that on December 19, 2001, Fitchburg Gas and Electric Light Company (Fitchburg) filed a service agreement with New Hampshire Electric Cooperative, Inc. for service under Fitchburg's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2463–000. Fitchburg requests an effective date of November 28, 2001.

Comment date: January 9, 2002.

20. Duke Energy Southaven, LLC

[Docket No. ER02–583–000]

Take notice that on December 20, 2001, Duke Energy Southaven, LLC (Duke Southaven) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Southaven seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Southaven also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Duke Southaven requests pursuant to Section 35.11 of the Commission's regulations that the Commission waive

the 60-day minimum notice requirement under Section 35.3(a) of its regulations and grant an effective date of February 18, 2002, the date on which Duke Southaven anticipates commencing the sale of test energy.

Comment date: January 10, 2002.

21. Wisconsin Public Service Corporation

[Docket No. ER02–584–000]

Take notice that on December 20, 2001, Wisconsin Public Service Corporation (WPSC), a subsidiary of WPS Resources Corp. (WPSR) on behalf of itself and Upper Peninsula Power Company (UPPCo), also a WPSR subsidiary (collectively the Operating Companies) tendered for filing Notices of Cancellation of Service Agreement Nos. 18, 19, 99 and 100. The service agreements are transmission service agreements with El Paso Merchant Energy, L.P. (El Paso) under WPS Resources Operating Companies' open Access Transmission Tariff. In conformity with Order No. 614 WPSC also tenders service agreement cover sheets that show that the service agreements have been canceled.

WPSC respectfully requests that the Commission accept its filing and allow the cancellation to become effective as of December 21, 2001.

Copies of the filing were served upon El Paso, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: January 10, 2002.

22. Pacific Gas and Electric Company

[Docket No. ER02–585–000]

Take notice that on December 20, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing a Notice of Cancellation of the PG&E First Revised Rate Schedule FERC No. 210 (Reliability Must-Run Service Agreement between Pacific Gas and Electric Company and the California Independent System Operator Corporation for Kings River Power Plant).

Copies of this filing have been served upon the California Independent System Operator Corporation (ISO) and the California Public Utilities Commission.

Comment date: January 10, 2002.

23. Public Service Company of New Mexico

[Docket No. ER02–586–000]

Take notice that on December 20, 2001, Public Service Company of New Mexico (PNM) submitted for filing an executed service agreement with the Valley Electric Association, Inc. dated December 17, 2001, for electric power and energy sales at negotiated rates under the terms of PNM's Power and Energy Sales Tariff. PNM has requested an effective date of December 6, 2001 for the agreement. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to the Valley Electric Association, Inc. and to the New Mexico Public Regulation Commission.

Comment date: January 10, 2002.

24. Dominion Nuclear Marketing II, Inc.

[Docket No. ER02–587–000]

Take notice that on December 20, 2001, Dominion Nuclear Marketing II, Inc. (the Company), respectfully tendered for filing the following Service Agreement by Dominion Nuclear Marketing II, Inc. to Allegheny Energy Supply Company, LLC, designated as Service Agreement No. 4, under the Company's FERC Market-Based Sales Tariff, Original Volume No. 1, effective on November 24, 2000. A copy of the filing was served upon Allegheny Energy Supply Company, LLC, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

The Company requests an effective date of November 30, 2001, as requested by the customer.

Comment date: January 10, 2002.

25. Dominion Nuclear Marketing II, Inc.

[Docket No. ER02–588–000]

Take notice that on December 20, 2001, Dominion Nuclear Marketing II, Inc. (the Company) respectfully tendered for filing the following Service Agreement by Dominion Nuclear Marketing II, Inc. to Connecticut Municipal Electric Energy Cooperative, designated as Service Agreement No. 5, under the Company's FERC Market-Based Sales Tariff, Original Volume No. 1, effective on November 24, 2000.

The Company requests an effective date of December 11, 2001, as requested by the customer.

A copy of the filing was served upon Connecticut Municipal Electric Energy Cooperative, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: January 10, 2002.

26. Duke Energy Enterprise, LLC

[Docket No. EG02–55–000]

Take notice that on December 29, 2001, Duke Energy Enterprise, LLC (Duke Enterprise) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Duke Enterprise is a Delaware limited liability company that will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities to be located in Clarke County, Mississippi. The eligible facilities will consist of a simple cycle electric generation plant with a nominal capacity of 640 MW and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment date: January 16, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

27. Meriden Gas Turbines LLC

[Docket No. EG02–56–000]

Take notice that on December 19, 2001, Meriden Gas Turbines LLC (Meriden) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935 (PUHCA) and Part 365 of the Commission's regulations.

As more fully explained in the application, Meriden is a limited liability company that will be engaged either directly or indirectly and exclusively in the business of owning and operating an electric generation facility located in Connecticut.

Comment date: January 16, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

28. MPX Termoceará Ltda.

[Docket No. EG02–57–000]

Take notice that on December 19, 2001, MPX Termoceará Ltda. (Applicant), Rua Dom Luis 500, sala 1925, Fortaleza, Ceará, Brazil filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a 49%-owned subsidiary of MDU Resources Group, Inc. Applicant will own and operate a simple cycle natural gas-fired power generation plant with a nominal 200 MW gross capacity (the Facility). All of the capacity and energy available from the Facility will be sold at wholesale.

Comment date: January 16, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32178 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11588–001 Alaska]

Alaska Power & Telephone Company; Notice of Availability of Draft Environmental Assessment

December 26, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application for an original license for Alaska Power and Telephone Company's proposed Otter Creek Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA). The proposed project would be located on Kasidaya Creek, at Taiya Inlet, 3 miles south of the City of Skagway, and 12 miles southwest of the City of Haines, Alaska. The proposed project would occupy approximately 6.0 acres of land within the Tongass National Forest, administered by the U.S. Forest Service.

This DEA contains the Commission staff's analysis of the potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. This filing may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (please call (202) 208–2222 for assistance).

Any comments to this DEA should be filed within *45* days from the date of this notice and should be addressed to Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For further information, contact Gaylord Hoisington, Project Coordinator, at (202) 219–2756.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32188 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2659–011 Oregon]

PacifiCorp; Notice of Availability of Final Environmental Assessment

December 26, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Powerdale Hydroelectric Project, located on the Hood River in Hood River County, Oregon, and has prepared a Final Environmental Assessment (FEA) for the project. There are no federal lands within the project boundaries although a portion of the project is located in the Columbia River Gorge National Scenic Area.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is on file with the Commission and is available for public inspection. The FEA may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

For further information, contact Bob Easton at (202) 219–2782.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32187 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms, Conditions, and Prescriptions

December 26, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2142–031.

c. *Date filed:* December 28, 1999.

d. *Applicant:* FPL Energy Maine Hydro LLC.

e. *Name of Project:* Indian Pond Hydroelectric Project.

f. *Location:* On the Kennebec River, near the town of The Forks, Somerset and Piscataquis counties, Maine. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Robert C. Richter III, Senior Environmental Coordinator; FPL Energy Maine Hydro, LLC; 100 Middle Street; Portland, ME 04101; (207) 771–3536.

i. *FERC Contact:* Jarrad Kosa, FERC Project Coordinator, at (202) 219–2831 or via e-mail at *jarrad.kosa@ferc.fed.us.*

j. Deadline for filing comments, recommendations, terms, conditions, and prescriptions: 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, recommendations, terms, conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

l. *Description of the Project:* The proposed peaking project consists of the following existing facilities: (1) A 2,000-foot-long dam, consisting of (a) a 270-foot-long, 175-foot-high concrete section, (b) a 200-foot-long attached powerhouse section, and (c) an earthen section in excess of 1,500 feet in length; (2) four steel penstocks ranging from 6 feet to 24 feet in diameter; (3) a concrete powerhouse containing four generating units, having a total rated hydraulic capacity of 7,140 cubic feet per second and installed generation capacity of 76.4 megawatts (4) a 3,746-acre impoundment varying in width from 0.9 to 1.5 miles, extending about 9 miles upstream, that has a usable storage capacity of 850 million cubic feet; and (5) appurtenant facilities. The applicant estimates the total average annual generation would be approximately 202 million kilowatt hours.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms, conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms, conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32186 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

December 21, 2001.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Exempt

1. Project No. 11495–000: 12–10–01, Kenneth D. Thomas
2. Project Nos. 2699–001 and 2019–017: 12–10–01, Carol Gleichman
3. Project No. 11563–002: 12–10–01, Carol Gleichman
4. RP00–241–000: 12–11–01, Office of Clerk/U.S. House of Representatives
5. CP01–415–000: 12–13–01 Medha Kochlar
6. CP01–176–000 and CP01–179–000: 12–13–01, Ray Hellwig
7. P–2342–011: 12–13–01, Loree Randall
8. CP01–76–000, CP01–77–000, RP01–217–000, and CP01–156–000: 12–18–01, Chris Zerby

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32189 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7123–7]

Notice of Deficiency for Clean Air Operating Permits Program in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority under section 502(i) of the Clean Air Act and the implementing regulations at 40 CFR 70.10(b)(1), EPA is publishing this notice of deficiency for the State of Washington's (Washington or State) Clean Air Act title V operating permits program, which is administered by two State agencies and seven local air pollution control authorities. The notice of deficiency is based upon EPA's finding that Washington's provisions for insignificant emissions units do not meet minimum Federal requirements for program approval. Publication of this notice is a prerequisite for withdrawal of Washington's title V program approval, but does not effect such withdrawal.

EFFECTIVE DATE: December 14, 2001. Because this Notice of Deficiency is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Denise Baker, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 6th Avenue, Seattle, WA 98101, (206) 553–8087.

I. Description of Action

EPA is publishing a notice of deficiency for the Clean Air Act (CAA or Act) title V operating permits program for the State of Washington. This document is being published to satisfy 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a title V permitting authority is not adequately administering or enforcing its title V operating permits program. The deficiency that is the subject of this notice relates to Washington's requirements for insignificant emissions units (IEUs) and applies to all State and local permitting authorities that implement Washington's title V program.

A. Approval of Washington's Title V Program

The CAA requires all State and local permitting authorities to develop operating permits programs that meet the requirements of title V of the Act, 42 U.S.C. 7661–7661f, and its implementing regulations, 40 CFR part 70. Washington's operating permits program was submitted in response to this directive. EPA granted interim approval to Washington's air operating permits program on November 9, 1994 (59 FR 55813). EPA repromulgated final interim approval of Washington's operating permits program on one issue, along with a notice of correction, on December 8, 1995 (60 FR 62992).

Washington's title V operating permits program is implemented by the Washington Department of Ecology (Ecology), the Washington Energy Facility Site Evaluation Commission (EFSEC), and seven local air pollution control authorities: the Benton County Clean Air Authority (BCCAA); the Northwest Air Pollution Authority (NWAPA); the Olympic Air Pollution Control Authority (OAPCA); the Puget Sound Clean Air Agency (PSCAA); the Spokane County Air Pollution Control Authority (SCAPCA); the Southwest Clean Air Agency (SWCAA); and the Yakima Regional Clean Air Authority (YRCAA). After these State and local agencies revised their operating permits programs to address the conditions of the interim approval, EPA promulgated final full approval of Washington's title V operating permits program on August 13, 2001 (66 FR 42439).

B. Additional Public Comment Process on Title V Programs

On December 11, 2000 (65 FR 77376), EPA published a **Federal Register** notice notifying the public of the opportunity to submit comments identifying any programmatic or implementation deficiencies in State title V programs that had received interim or full approval. Pursuant to the settlement agreement discussed in that notice, EPA committed to respond to the merits of any such claims of deficiency on or before December 1, 2001, for those States, such as Washington, that had received interim approval. On March 12, 2001, EPA received comments from Smith & Lowney, PLLC, on behalf of pacific Air Improvement Resource, Waste Action Project, Washington Toxics Coalition, and the Washington Environmental Council (the commenters). The commenters identified numerous alleged deficiencies in the title V operating permits programs administered by all Washington permitting authorities.

After thoroughly reviewing all issues raised by the commenters, EPA identified one area where EPA believes that Washington's regulations do not meet the requirements of title V and part 70—Washington's exemption of ''insignificant emission units'' from certain permit content requirements. Accordingly, EPA is issuing this notice of deficiency. In a separate document, EPA has responded to the other issues raised by the commenters, which EPA does not believe constitute deficiencies in Washington's operating permits program at this time.

C. Exemption of IEUs From Permit Content Requirements

Part 70 authorizes EPA to approve as part of a State program a list of insignificant activities and emission levels (IEUs) which need not be included in the permit application, provided that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the EPA-approved schedule. *See* 40 CFR 70.5(c). Nothing in part 70, however, authorizes a State to exempt IEUs from the testing, monitoring, recordkeeping, reporting, or compliance certification requirements of 40 CFR 70.6.

Washington's regulations contain criteria for identifying IEUs. *See* WAC 173–401–200(16), –530, –532, and –533. Sources that are subject to a Federally-enforceable requirement other than a requirement of the State Implementation Plan that applies generally to all sources in Washington (a so-called ''generally applicable requirement'') are not deemed ''insignificant'' under Washington's program even if they otherwise qualify under one of the five lists. *See* WAC 173–401–530(2)(a). Washington's regulations also expressly state that no permit application can omit information necessary to determine the applicability of, or to impose any applicable requirement. *See* WAC 173–401–510(1). In addition, WAC 173–401–530(1) and (2)(b) provide that designation of an emission unit as an IEU does not exempt the unit from any applicable requirements and that the permit must contain all applicable requirements that apply to IEUs. The Washington program, however, specifically exempts IEUs from testing, monitoring, recordkeeping, and reporting requirements except where such requirements are specifically imposed in the applicable requirement itself. *See* WAC 173–401–530(2)(c). The Washington program also exempts IEUs from compliance certification requirements. *See* WAC 173–401–530(2)(d).

Because EPA does not believe that part 70 exempts IEUs from the testing, monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6, EPA initially determined that Ecology must revise its IEU regulations as a condition of full approval. *See* 60 FR at 62993–62997 (final interim approval of Washington's operating permits program based on exemption of IEUs from certain permit content requirements); 60 FR 50166 (September 28, 1995) (proposed interim approval of

Washington's operating permits program on same basis). The Western States Petroleum Association (WSPA), together with several other companies and the Washington Department of Ecology, challenged EPA's determination that Ecology must revise its IEU regulations as a condition of full approval. *See* 66 FR at 19. On June 17, 1996, the Ninth Circuit found in favor of the petitioners. *WSPA* v. *EPA*, 87 F.3d 280 (9th Cir. 1996). The Ninth Circuit did not opine on whether EPA's position was consistent with part 70. It did, however, find that EPA had acted inconsistently in its title V approvals, and had failed to explain the departure from precedent that the Court perceived in the Washington interim approval. The Court then remanded the matter to EPA, instructing EPA to give full approval to Washington's IEU regulations.

In light of the Court's order in the WSPA case, EPA determined that it must give full approval to Washington's IEU regulations. Therefore, on August 13, 2001, EPA published a **Federal Register** notice granting final full approval to Washington's title V program notwithstanding what EPA believed to be a deficiency in its IEU regulations. 66 FR 42439–42440 (August 13, 2001). Nonetheless, as EPA stated in its final full approval of Washington's program, EPA maintained its position that part 70 does not allow the exemption of IEUs subject to generally applicable requirements from the testing, monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6 and intended to issue a notice of deficiency in another rulemaking action if the deficiencies in Washington's IEU regulations were not promptly addressed.

Since issuance of the Court's order in WSPA case, EPA has carefully reviewed the IEU provisions of those eight title V programs identified by the Court as inconsistent with EPA's decision on Washington's regulations. EPA has determined that three of the title V programs identified by the WSPA Court (Massachusetts; North Dakota; Knox County, Tennessee) are in fact consistent with EPA's position that insignificant sources subject to applicable requirements may not be exempt from permit content requirements. *See* 61 FR 39338 (July 29, 1996). North Carolina, Florida, and Jefferson County, Kentucky have made revisions to their IEU provisions. EPA has approved the changes made by North Carolina and Florida. 65 FR 38744, 38745 (June 22, 2000) (Forsyth County, North Carolina); 66 FR 45941 (August 31, 2001) (all other North Carolina permitting authorities); 66 FR 49837 (October 1, 2001) (Florida). EPA has not yet taken action on the changes made by Jefferson County, Kentucky. EPA has notified Ohio and Hawaii that their provisions for IEUs do not conform to the requirements of part 70 and must be revised. If Ohio and Hawaii do not revise their provisions for IEUs to conform to part 70, EPA intends to issue notices of deficiencies to these permitting authorities in accordance with the time frames set forth in the December 11, 2000 **Federal Register** notice soliciting comments on title V program deficiencies. *See* 65 FR 77376. Having addressed the inconsistencies identified by the Ninth Circuit when it ordered EPA to approve Washington's IEU provisions, EPA is now notifying Washington that it must bring its IEU provisions into alignment with the requirements of part 70 and other State and local title V programs or face withdrawal of its title V operating permits program.

Because WAC 173–401–530(2)(c) and (d), the regulations that exempt IEUs from certain permit content requirements, apply throughout the State of Washington, this notice of deficiency applies to all State and local agencies that implement Washington's operating permits program. As discussed above, those agencies include Ecology, EFSEC, BCCAA, NWAPA, OAPCA, PSCAA, SCAPCA, SWACAA, and YRCAA.

D. Effect of Notice of Deficiency

Part 70 provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(c)(1). This section goes on to list a number of potential bases for program withdrawal, including the case where the permitting authority's legal authority no longer meets the requirements of part 70. 40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the document be published in the **Federal Register**. Today's document satisfies this requirement and constitutes a finding of program deficiency. If the permitting authority has not taken ''significant action to assure adequate administration and enforcement of the program'' within 90 days after publication of a notice of deficiency, EPA may withdraw the State program, apply any of the sanctions specified in section 179(b) of the Act, or promulgate, administer, and enforce a Federal title V program. 40 CFR 70.10(b)(2). Section 70.10(b)(3) provides that if a State has not corrected the deficiency within 18 months of the finding of deficiency, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. Upon EPA action, the sanctions will go into effect unless the State has corrected the deficiencies identified in this document within 18 months after signature of this document.[1] In addition, section 70.10(b)(4) provides that, if the State has not corrected the deficiency within 18 months after the date of notice of deficiency, EPA must promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw Washington's title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days, at which point it will determine whether Washington has taken significant action to correct the deficiency.

II. Administrative Requirements

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of today's action may be filed in the United States Court of Appeals for the appropriate circuit within 60 days of January 2, 2002.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 14, 2001.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 01–32103 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00439M; FRL–6818–1]

Pesticide Program Dialogue Committee;Committee and Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

[1] EPA is developing an Order of Sanctions rule to determine which sanction applies at the end of this 18 month period.

SUMMARY: As required by the Federal Advisory Committee Act, 5 U.S.C., App. 2 section 9(c), EPA's Office of Pesticide Programs (OPP) is giving notice of the renewal of the Pesticide Program Dialogue Committee (PPDC) and its Charter and the appointment of new members.

DATES: The PPDC Charter, which was filed with Congress on November 9, 2001, will be in effect for 2 years, until November 9, 2003.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach (7501C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–4775 or (703) 305–7093; fax number: (703) 308–4776; e-mail address: Fehrenbach.Margie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, it may be of interest to persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act; the Federal Food, Drug, and Cosmetic Act; and the amendments to both of these major pesticide laws by the Food Quality Protection Act (Public Law 104–170) of 1996. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about PPDC, go directly to the Home Page for EPA's Office of Pesticide Programs at http://www.epa.gov/pesticides/ppdc.

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–00439M. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the Pesticide Program Dialogue Committee (PPDC). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Participate in PPDC Meetings?

PPDC meetings and workshops will be open to the public under section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463. Outside statements by observers will be welcome. Oral statements will be limited to 3–5 minutes, and it is preferred that only one person per organization present the statement. Any person who wishes to file a written statement may do so before or after the meeting. These statements will become part of the permanent record and will be available for public inspection at the address in Unit II.2.

II. Background

The PPDC is composed of 42 members appointed by the EPA Deputy Administrator. Committee members were selected from a balanced group of participants from the following sectors: Pesticide users, grower and commodity groups; industry and trade associations; environmental/public interest and farmworker groups; Federal, State and tribal governments; public health organizations; animal welfare; and academia. PPDC was established to provide a public forum to discuss a wide variety of pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science policy issues associated with evaluating and reducing risks from use of pesticides.

List of Subjects

Environmental protection, Agriculture, Chemicals, Drinking water, Foods, Pesticides, Pests.

Dated: December 21, 2001.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 01–32214 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7124–1]

Peer Review of EPA Draft Human Health and Ecological Risk Assessment of Perchlorate

AGENCY: Environmental Protection Agency.

ACTION: Notice of Peer Review Workshop and public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Office of Research and Development is announcing an external peer review workshop to review the revised draft document entitled, ''Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization'' (NCEA–I–0503). The EPA is also announcing a public comment period for this draft document. The workshop is being organized and convened by the Eastern Research Group, Inc. (ERG), an EPA contractor.

DATES: The two-day peer review workshop will begin on Tuesday, March 5, 2002, at 9 a.m. and will end on Wednesday, March 6, 2002, at 4:30 p.m. The 30-day public review and comment period will begin January 9, 2002, and will end February 11, 2002.

ADDRESSES: The external peer review meeting will be held at a facility in Sacramento, California. To attend the meeting as an observer, please register with ERG via the Internet by visiting *www.meetings@erg.com.* You may also register by calling ERG's conference registration line at 781–674–7374 or by faxing a registration request to 781–674–2906. Upon registering, you will be sent an agenda and a logistical fact sheet containing information on the meeting site, overnight accommodations, and ground transportation. The deadline for pre-registration is February 25, 2002. Space is limited, and reservations will be accepted on a first-come, first-served basis. There will be a limited time for oral comments on the revised draft document during the meeting. When registering, please let ERG know if you

wish to make a brief statement not to exceed five minutes.

Document Availability: The external review draft of the perchlorate document will be available by January 9, 2002, on EPA's National Center for Environmental Assessment (NCEA) Web site at *http://www.epa.gov/ncea.* In addition, a compact disk (CD) containing documents cited in the ''Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization'' report that cannot be readily obtained from the open literature will be available by request as of January 9, 2002. To obtain a copy of the CD, you may contact the EPA Superfund Records Center in San Francisco, California. A shipping and handling fee may apply. The circulation desk phone number for the Superfund Records Center is 415–536–2000. Copies of the perchlorate document and CD are not available from ERG.

Comment Submission: Written comments should be submitted to ERG, Inc., 110 Hartwell Avenue, Lexington, Massachusetts 02421. Comments under 50 pages may be sent via e-mail attachment (in Word, Word Perfect, or PDF) to *www.meetings@erg.com.* Written comments must be postmarked by the end of the public comment period (February 11, 2002). Please note that all technical comments received in response to this notice will be placed in a public record. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: Questions regarding registration and logistics should be directed to EPA's contractor, ERG, Inc., at 781–674–7374. For technical inquiries, please contact: Annie Jarabek, U.S. Environmental Protection Agency (MD 52), USEPA Mailroom, Research Triangle Park, NC 27711; telephone 919–541–4847; facsimile 919–541–1818; *e-mail jarabek.annie@epa.gov.*

SUPPLEMENTARY INFORMATION: Perchlorate (ClO_4) is an anion that originates as a contaminant in groundwater and surface waters from the dissolution of ammonium, potassium, magnesium, or sodium salts. Perchlorate is exceedingly mobile in aqueous systems and can persist for many decades under typical groundwater and surface water conditions. A major source of perchlorate contamination is the manufacture of ammonium perchlorate for use as the oxidizer component and primary ingredient in solid propellant for rockets, missiles, and fireworks.

EPA's Superfund Technical Support Center issued a provisional reference dose (RfD) for perchlorate in 1992 and a revised provisional RfD in 1995 based on the effects of potassium perchlorate in patients with Graves' disease (an autoimmune disease that results in hyperthyroidism). (An RfD is an estimate of a daily oral human exposure that is anticipated to be without adverse noncancer health effects over a lifetime.) In March 1997, the existing toxicologic database on perchlorate was determined to be inadequate for quantitative human health risk assessment by an external peer review panel. A lack of data on the ecotoxicological effects was also noted. In May 1997, a testing strategy was developed based on the known mode-of-action for perchlorate toxicity (the inhibition of iodide uptake in the thyroid and subsequent perturbations of thyroid hormone homeostasis), and an accelerated research program was initiated to gain a better understanding of the human health effects of perchlorate, examine possible ecological impacts, refine analytical methods, develop treatment technologies, and better characterize the occurrence of perchlorate in groundwater and surface waters.

In December 1998, the National Center for Environmental Assessment (NCEA) developed an external peer review draft document that assessed the human health and ecological risk of perchlorate (''Perchlorate Environmental Contamination: Toxicology Review and Risk Characterization Based on Emerging Information,'' NCEA–I–0503). This document presented an updated human health risk assessment that incorporated results of the newly performed health effects studies available as of November 1998 and a screening-level ecological assessment. The human health risk assessment model utilized a mode-of-action approach that harmonized noncancer and cancer approaches to derive a single oral risk benchmark based on precursor effects for both neurodevelopmental and thyroid neoplasia. A workshop was convened in February 1999 in San Bernardino, California, to provide external peer review of that document. Peer reviewers endorsed the conceptual approach proposed by NCEA, but recommended that new analyses be conducted and that several additional studies be planned and performed. NCEA has prepared a revised perchlorate assessment that addresses comments from the 1999 external peer review workshop and incorporates data from additional studies that were either nearing completion at the time of the 1999 review or were recommended at that time. This revised draft document is the subject of the external peer review workshop announced in today's **Federal Register** notice.

The external peer review panel will consist of a panel of independent scientists selected by EPA's contractor, ERG, from the fields of developmental toxicology, reproductive toxicology, neurotoxicology, immunotoxicology, pharmacokinetics, genetic toxicology, endocrinology, pathology, epidemiology, statistics, ecotoxicology, and environmental transport and biotransformation. Peer reviewers will review the revised human health and ecological risk assessment for perchlorate as well as new studies performed since the 1999 external peer review. Following the external peer review workshop, ERG will prepare a report summarizing the workshop. EPA will address the comments of the external peer reviewers in finalizing the perchlorate risk assessment document and in developing revised toxicity values. The human health and ecological risk assessment may be used in the future to support development of a health advisory or possible drinking water regulations and cleanup decisions at hazardous waste sites. However, any such future decisions would be subject to all applicable statutory and regulatory requirements and policy considerations for use of the assessments under those programs.

Dated: December 20, 2001.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 01–32088 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

December 19, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control

number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 1, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0519.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CC Docket No. 92–06).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 30,000.

Estimated Time Per Response: 31.2 hours per response (avg.).

Frequency of Response: Recordkeeping requirement, third party disclosure requirement, on occasion reporting requirement.

Total Annual Burden: 936,000 hours.

Total Annual Cost: N/A.

Needs and Uses: Parts 64 and 68 of the Commission's rules contain procedures for avoiding unwanted telephone solicitations to residences, and to regulate the use of automatic telephone dialing systems, artificial or pre-recorded voice messages, and telephone facsimile machines. The Commission believes that the recordkeeping requirement is the best means of preventing unwanted telephone solicitations.

OMB Control No.: 3060–0837.

Title: Application for DTV Broadcast Station License.

Form No.: FCC Form 302–DTV.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 600.

Estimated Time Per Response: 1.5–6 hours per response (avg.).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 950 hours.

Total Annual Cost: $245,000.

Needs and Uses: FCC Form 302–DTV is used by licensees and permittees of DTV broadcast stations to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit and to ensure that any changes to the station's authorized facilities, made without prior Commission approval, will not have any impact on other stations and the public. Data is extracted from FCC 302–DTV for inclusion in the license to operate the station.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–32249 Filed 12–31–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Policy Statement Regarding Minority-Owned Depository Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Policy statement.

SUMMARY: The FDIC is proposing to revise its Policy Statement Regarding Minority-Owned Depository Institutions. Section 308 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (''FIRREA'') requires the Secretary of the Treasury to consult with the Director of the Office of Thrift Supervision and the Chairperson of the Board of Directors of the FDIC to determine the best methods for preserving and encouraging minority ownership of depository institutions. The FDIC has long recognized the unique role and importance of minority-owned depository institutions and has historically taken steps to preserve and encourage minority ownership of financial institutions. The revised Policy Statement updates, expands, and clarifies the agency's policies and procedures related to minority-owned institutions.

DATES: Written comments must be received on or before March 4, 2002.

ADDRESSES: All comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (fax number (202) 898–3838; Internet address: *comments@fdic.gov*). Comments may be posted on the FDIC Internet site at *http://www.fdic.gov/regulations/laws/federal/propose.html* and may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Brett A. McCallister, Risk Management and Applications Section, Division of Supervision (202) 898–3803 or Grovetta N. Gardineer, Counsel, Legal Division, (202) 898–3728, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On April 3, 1990, the Board of Directors of the FDIC adopted a Policy Statement on Encouragement and Preservation of Minority Ownership of Financial Institutions. The framework for the original Policy Statement resulted from several key provisions contained in Section 308 of FIRREA, which enumerated several goals as follows: (1) Preserving the number of minority depository institutions; (2) preserving the minority character in cases of merger or acquisition; (3) providing technical assistance to prevent insolvency of institutions not now insolvent; (4) promoting and encouraging creation of new minority depository institutions; and (5) providing for training, technical assistance, and education programs.

The original Policy Statement provided guidance to the industry regarding the agency's efforts in achieving the goals of Section 308. The revised Policy Statement attempts to provide a more structured framework that sets forth initiatives of the FDIC to promote the preservation of, as well as to provide technical assistance, training and educational programs to, minority-owned institutions by working with

those institutions, their trade associations and the other federal financial regulatory agencies.

Section 308(b) of FIRREA provides that ''minority'' means any Black American, Native American, Hispanic American or Asian American. The FDIC adopts this definition of minority in the revised Policy Statement. Section 308(b) of FIRREA defines the term ''minority depository institution'' as: any depository institution that—(A) If a privately owned institution, 51 percent is owned by one or more socially and economically disadvantaged individuals; (B) if publicly owned, 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals; and (C) in the case of a mutual institution where the majority of the Board of Directors, account holders, and the community which it services is predominantly minority. The revised Policy Statement defines the term ''minority-owned institution'' as any Federally insured depository institution where 51 percent or more of the voting stock is owned by minority individuals. Additionally mutual, publicly traded, and widely held institutions will be considered minority-owned if a majority of the Board of Directors, account holders, and the community which the institution serves are predominantly minority, regardless of non-minority or non-U.S. citizen ownership of the capital stock. The proposed Policy Statement also clarifies that the FDIC's program is targeted at institutions owned by U.S. citizens, and ownership by non-U.S. citizens is not counted in determining minority-owned status. The FDIC invites the public to comment on the proposed definition of ''minority-owned institution''. The FDIC specifically seeks comment on the proposed treatment of mutual, publicly traded and widely held institutions, as to the feasibility of collecting information regarding the account holders and the community in making a determination regarding its status as a minority-owned institution.

The proposed Policy Statement also provides for the FDIC to maintain a list of minority-owned institutions to ensure that all eligible minority-owned depository institutions are able to participate in the program. If not already identified as minority-owned, an institution can be added to the list by self-certifying that the institution meets the above definition. FDIC examiners will review the accuracy of the list during regular examinations, and case managers will incorporate any changes due to mergers, acquisitions, and changes in control. The FDIC will also work with the other Federal regulatory agencies to make certain that the minority-owned institutions that they supervise are included on the list. The revised Policy Statement makes it clear, however, that inclusion on the list is voluntary and any institution that does not want to be included will be removed from the official list. The FDIC invites comments on this approach to compile a list of minority-owned institutions.

The revised Policy Statement also proposes to designate a national coordinator for the FDIC's minority-owned institution program. The national coordinator will be located at the FDIC's Washington, DC headquarters. That person will act as a liaison between the Division of Supervision and officials from the Division of Compliance and Consumer Affairs, the Office of Diversity and Economic Opportunity and the Division of Resolutions and Receiverships and the other federal financial regulators. The national coordinator will regularly contact the various minority-owned institution trade associations to obtain feedback on the FDIC's efforts under the program. The national coordinator will be responsible for contacting the other Federal financial regulatory agencies to discuss their outreach efforts and to identify opportunities for the agencies to work together to assist minority-owned institutions. The national coordinator will also guide subject matter experts in each of the FDIC's eight regional offices who will oversee their region's efforts under the program. The FDIC believes that the more formalized structure within the Division of Supervision will facilitate more meaningful and helpful communications between the FDIC and minority-owned institutions since these employees will be available to answer questions or provide assistance on issues presented by minority-owned institutions. The FDIC specifically seeks comment on this proposed organizational structure.

The revised Policy Statement also discusses the types of technical assistance that will be provided by the FDIC to minority-owned institutions. The Policy Statement sets forth examples of ways that FDIC staff will be able to provide assistance to minority-owned institutions while making it clear that staff will not perform duties and tasks reserved for management of a minority-owned institution. In addition to being available to answer questions and provide guidance to a minority-owned institution, the FDIC is also proposing to have staff return to any minority-owned institution approximately 90 to 120 days after the conclusion of an examination to review any areas of concern identified during the examination or any issues of particular interest to the institution. The minority-owned institution may accept or decline this offer of assistance. The FDIC invites comments on the scope of technical assistance that would be provided by the FDIC and the optional return visit at the conclusion of an examination of a minority-owned institution.

The revised Policy Statement also proposes that the FDIC work with trade associations representing minority-owned institutions, as well as other regulatory agencies, to discuss and provide for training opportunities for minority-owned institutions. The proposed Policy Statement provides that the FDIC will partner with certain trade associations to offer training programs during their annual conferences and regional meetings. The FDIC solicits comments on other methods to identify and provide training and educational programs that would be beneficial to minority-owned institutions.

The revised Policy Statement also discusses the issue of failing institutions. The revised Policy Statement states that the Division of Resolutions and Receiverships is the appropriate division in the FDIC to deal with issues regarding failing institutions. While the original Policy Statement provided for certain preferences to be given to minority-owned institutions in the resolution of failed institutions pursuant to Sections 13(k) and 13(f)(12) of the FDI Act, the revised Policy Statement takes into account both the decision of the United States Supreme Court in *Adarand Constructors, Inc.* v. *Pena,* 115 S. Ct. 2097 (1995) and the statutory requirement under Section 13(c)(4) enacted in 1991 that failed institutions be resolved in a manner that results in the least cost to the insurance fund. The *Adarand* decision held that federal affirmative action programs that use racial and ethnic criteria as a basis for decisionmaking are subject to strict judicial scrutiny. The decision set forth a two-prong test to determine whether federally administered affirmative action programs are constitutional. The first prong of the test requires the government to demonstrate a compelling interest in remedying past or persistent continuing or lingering discrimination against minorities and the second prong requires that any remedy be narrowly tailored to cure a specific identified problem. While *Adarand* was a contracts case, the strict scrutiny standard of review will apply whenever the federal government voluntarily adopts a racial or ethnic

classification as a basis for decisionmaking. As a result, this ruling has had a significant impact on the FDIC's ability to give preference to minority institutions in a resolutions context. In October of 2001, the U.S. Supreme Court heard another case involving Adarand Constructors. While the FDIC had hoped to gain additional guidance on what actions may be permissible regarding the minority preference statutes, the Supreme Court declined to render a decision in the case citing procedural problems with the case that prevented the Court from addressing the merits of the affirmative action complaint.

Additionally, the least-cost resolution requirement also significantly reduced the ability of the FDIC to give preference to minority institutions in the resolution of failed institutions. However, the Division of Resolutions and Receiverships will work with the Division of Supervision and the Office of Diversity and Economic Opportunity to ensure that all qualified minority institutions and individuals that have expressed an interest in acquiring a minority-owned institution are notified of any potential failure. The FDIC invites the public to comment on the methodology to be used to ensure that all qualified minority-owned institutions will be made aware of situations involving the failure of a minority-owned institution.

To ensure that the regional coordinators are meeting the goals associated with the revised Policy Statement, the proposed Policy Statement requires them to provide quarterly reports to the national coordinator on their region's activities relating to minority-owned institutions. The national coordinator, in turn, will compile the results of the eight regional reports and provide a quarterly summary to the Office of the Chairman. The FDIC's Annual Report will also contain information relating to the agency's efforts to promote and preserve minority-owned financial institutions. The proposed Policy Statement also provides for the FDIC to create a Webpage on its Internet site (*www.fdic.gov*) to promote the minority-owned institution program. It is anticipated that the Webpage will describe the program, contain information regarding the national coordinator and the regional coordinators and provide links to the list of minority-owned institutions, their trade associations and other programs that specifically affect minority-owned institutions. The FDIC invites the public to comment on the types of information that would be helpful and beneficial to include on the agency's Web page regarding the minority-owned institution program.

The text of the proposed Policy Statement follows:

Federal Deposit Insurance Corporation

Policy Statement Regarding Minority-Owned Depository Institutions

Minority-owned depository institutions often promote the economic viability of minority and under-served communities. The FDIC has long recognized the importance of minority-owned institutions and has historically taken steps to preserve and encourage minority ownership of insured financial institutions.

Statutory Framework

In August 1989, Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA''). Section 308 of FIRREA established the following goals:

- Preserve the number of minority-owned depository institutions;
- Preserve the minority character in cases of merger or acquisition;
- Provide technical assistance to prevent insolvency of institutions not now insolvent;
- Promote and encourage creation of new minority-owned depository institutions; and
- Provide for training, technical assistance, and educational programs.

Definition

''Minority'' as defined by Section 308 of FIRREA means any Black American, Asian American, Hispanic American, or Native American. For the purposes of this Policy Statement, the term ''minority-owned institution'' means any Federally insured depository institution where 51 percent or more of the voting stock is owned by minority individuals. This includes institutions collectively owned by a group of minority individuals, such as a Native American Tribe. However, ownership by non-U.S. citizens will not be counted in determining minority-owned status. Mutual, publicly traded, and widely held institutions will be considered minority-owned if a majority of the Board of Directors, account holders, and the community which the institution serves are predominantly minority, regardless of non-minority or non-U.S. citizen ownership.

Identification of Minority-Owned Institutions

To ensure that all minority-owned depository institutions are able to participate in the program, the FDIC will maintain a list of federally insured minority-owned institutions. Institutions that are not already identified as minority-owned by the FDIC can request to be designated as such by certifying that they meet the above definition. For institutions supervised directly by the FDIC, our examiners will review the accuracy of the list during the examination process. In addition, case managers in our regional offices will note changes to the list while processing deposit insurance applications, merger applications, change of control notices, or failures of minority-owned institutions. The FDIC will work closely with the other Federal regulatory agencies to ensure that institutions not directly supervised by the FDIC are accurately captured on our list. In addition, the FDIC will periodically provide the list to relevant trade associations and seek input regarding its accuracy. Inclusion in the FDIC's minority-owned institution program is voluntary. Any minority-owned institution not wishing to participate in this program will be removed from the official list upon request.

Organizational Structure

The Division of Supervision has designated a national coordinator for the FDIC's minority-owned institutions program in the Washington Office and a regional coordinator in each Regional Office. The national coordinator will consult with officials from the Division of Compliance and Consumer Affairs, the Office of Diversity and Economic Opportunity, the Legal Division, and the Division of Resolutions and Receiverships to ensure appropriate personnel are involved in program initiatives. The national coordinator will regularly contact the various minority-owned institution trade associations to seek feedback on the FDIC's efforts under this program, discuss possible training initiatives, and explore options for preserving and promoting minority ownership of depository institutions. As the primary Federal regulator for State nonmember banks, the FDIC will focus its efforts on these institutions. However, the national coordinator will meet with the other Federal regulators periodically to discuss each agency's outreach efforts, to share ideas, and to identify opportunities where the agencies can work together to assist minority-owned institutions. Representatives of other divisions and offices may participate in these meetings.

The regional coordinators are knowledgeable about minority-owned bank issues and are available to answer questions or to direct inquiries to the

appropriate office. However, each FDIC insured institution has previously been assigned a specific case manager in their regional office who will continue to be the institution's central point of contact at the FDIC. At least annually, regional coordinators will contact each minority-owned, State nonmember bank in their respective regions to discuss the FDIC's efforts to promote and preserve minority ownership of financial institutions and will offer to have a member of regional management meet with the institution's board of directors to discuss issues of interest. Finally, the regional coordinators will contact all new minority-owned State nonmember banks identified through insurance applications, merger applications, or change in control notices to familiarize the institutions with the FDIC's minority-owned institution program.

Technical Assistance

The FDIC can provide technical assistance to minority-owned institutions in several ways on a variety of issues. An institution can contact its case manager for assistance in understanding bank regulations, FDIC policies, examination procedures, etc. Case managers can also explain the application process and the type of analysis and information required for different applications. During examinations, examiners are expected to fully explain any supervisory recommendations and should offer to help management understand satisfactory methods to address such recommendations.

At the conclusion of each examination of a minority-owned institution directly supervised by the FDIC, the FDIC will offer to have representatives return to the institution approximately 90 to 120 days later to review areas of concern or topics of interest to the institution. The purpose of the return visit will be to provide technical assistance, not to identify new problems. The level of technical assistance provided should be commensurate with the issues facing the institution, but FDIC employees will not perform tasks expected of an institution's management or employees. For example, FDIC employees may explain Call Report instructions as they relate to specific accounts, but will not assist in the preparation of an institution's Call Report. As another example, FDIC employees may provide information on community reinvestment opportunities, but will not participate in a specific transaction.

Training and Educational Programs

The FDIC will work with trade associations representing minority-owned institutions and other regulatory agencies to periodically assess the need for, and provide for, training opportunities and educational opportunities. We will partner with the trade associations to offer training programs during their annual conferences and other regional meetings.

Failing Institutions

In the event of a potential failure of a minority-owned institution, the Division of Resolutions and Receiverships will contact all minority-owned institutions nationwide that qualify to bid on failing institutions. The Division of Resolutions and Receiverships will solicit qualified minority-owned institutions' interest in the failing institution, discuss the bidding process, and upon request, offer to provide technical assistance regarding completion of the bid forms. In addition, the Division of Resolutions and Receiverships, with assistance from the Office of Diversity and Economic Opportunity, will maintain a list of minority individuals and nonbank entities that have expressed an interest in acquiring failing minority-owned institutions. Trade associations that represent minority-owned institutions (the National Bankers Association, the American League of Financial Institutions, and the North American Native Bankers Association) will also be contacted periodically to help identify possible interested parties.

Reporting

The regional coordinators will report their region's activities related to this Policy Statement to the national coordinator quarterly. The national coordinator will compile the results of the regional offices' reports and submit a quarterly summary to the Office of the Chairman. Our efforts to preserve and promote minority ownership of depository institutions will also be highlighted in the FDIC's Annual Report.

Internet Site

The FDIC will create a Webpage on its Internet site (*www.fdic.gov*) to promote the minority-owned institution program. Among other things, the page will describe the program and include the name, phone number, and email address of the national coordinator and each regional coordinator. The page will also contain links to the list of minority-owned institutions, pertinent trade associations, and other regulatory agency programs. We will also explore the feasibility and usefulness of posting other items to the page, such as statistical information and comparative data for minority-owned institutions. Visitors will have the opportunity to provide feedback regarding the program on the Web page.

By order of the Board of Directors.

Dated at Washington, DC., this 20th day of December, 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–32155 Filed 12–31–01; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 16, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. CoVest Bancshares, Inc. Employee Stock Ownership Plan Trust, James L. Roberts (Trustee), Paul A. Larsen (Trustee), and Barbara A. Buscemi (Trustee), all of Des Plaines, Illinois; to retain voting shares of CoVest Bancshares, Inc., and Covest Banc, National Association, both of Des Plaines, Illinois.

Board of Governors of the Federal Reserve System, December 26, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–32132 Filed 12–31–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 28, 2002.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. CRSB Bancorp, Inc., Delano, Minnesota; to become a bank holding company by acquiring 99.91 percent of the voting shares of Crow River State Bank, Delano, Minnesota.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. First York BanCorp, York, Nebraska; to acquire 100 percent of the voting shares of K.L. & D.M., Inc., Polk, Nebraska and thereby indirectly acquire Citizens State Bank, Polk, Nebraska.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. BNP Paribas, Paris, France, and BancWest Corporation, Honolulu, Hawaii; to acquire 100 percent of the voting shares of United California Bank, Los Angeles, California.

Board of Governors of the Federal Reserve System, December 26, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–32133 Filed 12–31–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, January 7, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1.Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 28, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–32256 Filed 12–28–01; 12:12 pm]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time: 10:30 a.m.

Date: January 15, 2002.

Place: 4th Floor, Conference Room, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C.

Status: Open.

Matters to Be Considered:

1. Approve minutes of the June 27, 2000, meeting.

2. Report of the Executive Director on Thrift Savings Plan status.

3. November 15, 2001-January 31, 2002, Thrift Savings Plan Open Season.

4. Legislation.

5. New TSP record keeping system.

6. New business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact Elizabeth S. Woodruff, Committee Management Officer, on (202) 942–1660.

Dated: December 27, 2001.

Elizabeth S. Woodruff,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 01–32252 Filed 12–28–01; 5:23 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality.

Time and Dates: 9 a.m.–5 p.m. January 24, 2002,
9 a.m.–1 p.m. January 25, 2002.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Background: The National Committee on Vital and Health Statistics is the statutory public advisory body to the Secretary of Health and Human Services in the area of health data, statistics, and health information policy. It is established by section 306(k) of the Public Health Service Act (42 U.S.C. 242k(k)), and its mandate includes advising the Secretary on the implementation of the Administrative Simplification provisions (Social Security Act, title XI, part C, 42 U.S.C. 1320d to 1320d–8) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104–191.

Its Subcommittee on Privacy and Confidentiality monitors developments in health information privacy and confidentiality on behalf of the full Committee and makes recommendations to the full Committee so that it can advise the Secretary on implementation of the health information privacy provisions of HIPAA.

Purpose: This meeting of the Subcommittee on Privacy and Confidentiality will receive information on the implementation of the regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164), promulgated under the Health Insurance Portability and Accountability Act of 1996.

The regulation and further information about it can be found on the Web site of the Office for Civil Rights, at *http://www.hhs.gov/ocr/hipaa/.* The regulation has been in effect since April 14, 2001. Most entities covered by the regulation must come into compliance by April 14, 2003, and many are beginning the process of implementing it.

The first day of the meeting will be conducted as a hearing, in which the Subcommittee will gather detailed information about implementation of the regulation's provisions for use and disclosure of health information for marketing and fundraising. The Subcommittee will invite specific representatives of affected groups, in order to obtain information about practical issues in implementation of the regulation with respect to these uses and disclosures of information, and to obtain suggestions about possible solutions for such issues.

The format will include one or more invited panels on these issues and time for questions and discussion. The Subcommittee will ask the invited witnesses for focused, detailed analyses and description, with examples, of the effect the regulation is expected to have, on individuals and on entities subject to the regulation, with respect to these matters, based on early implementation efforts and preliminary assessments of impact.

The second day of the meeting will consist of Subcommittee discussion of the testimony it has heard and deliberations about possible recommendations to the Secretary.

In addition to the panels that will be invited to address these issues, members of the public who would like to make a brief (3 minutes or less) oral comment on one or more of the specified issues during the hearing will be placed on the agenda as time permits. To be included on the agenda, please contact Marietta Squire (301) 458–4524, by E-mail at *mrawlinson@cdc.gov*, or postal address at NCHS, Presidential Building, Room 1100, 6525 Belcrest Road, Hyattsville, Maryland 20782 by January 17, 2002.

Persons wishing to submit written testimony only (which should not exceed five double-spaced typewritten pages) should endeavor to submit it by that date. Unfilled slots for oral testimony will also be filled on the day of the meeting as time permits. Please consult Ms. Squire for further information about these arrangements.

Additional information about the hearing will be provided on the NCVHS Web site at *http://www.ncvhs.hhs.gov* shorthy before the hearing date.

Contact Person for More Information: Information about the content of the hearing and matters to be considered may be obtained from John P. Fanning, Lead Staff Persons for the NCVHS Subcommittee on Privacy and Confidentiality, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, 440D Humphrey Building, 200 Independence Avenue SW., Washington DC 20201, telephone (202) 690–5896, E-mail *jfanning@osaspe.dhhs.gov.* or from Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information about the committee, including summaries of past meetings and a roster of committee members, is available on the Committee's Web site at *http://www.ncvhs.hhs.gov.*

Dated: December 20, 2001.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for, Planning and Evaluation.

[FR Doc. 01–32198 Filed 12–31–01; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Immunosuppressive Drugs Subcommittee of the Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Immunosuppressive Drugs Subcommittee of the Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 24, 2002, from 8:30 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: TurnerT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will discuss new drug applications (NDAs) 21–083/SE1–006 and 21–110/SE1–004, RAPAMUNE (sirolimus) oral solution and tablets, Wyeth-Ayerst Research, approved for prophylaxis of organ rejection in patients receiving renal transplants. As stated in the approved labeling, it is recommended that RAPAMUNE be used in a regimen with cyclosporine and corticosteroids. The discussion is for the proposed elimination of cyclosporine from the immunosuppressive regimen 2 to 4 months after transplantation under certain conditions.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by January 16, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 16, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 19, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–32175 Filed 12–31–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 16, 2002, from 10 a.m. to 12:30 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact: William Freas, or Sheila D. Langford, Center for Biologics Evaluation and Research (CBER) (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 16, 2002, the committee will hear presentations relevant to the site visit report on the review of the research programs of the Laboratory of Bacterial, Parasitic, and Unconventional Agents, and the Laboratory of Molecular Virology, Division of Emerging and Transfusion Transmitted Diseases, Office of Blood Research and Review, CBER.

Procedure: On January 16, 2002, from 10:00 a.m. to 10:45 a.m., and from 11:30 a.m. to 12:30 p.m. the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 9, 2002. Oral presentations from the public will be scheduled between approximately 11:30 a.m. to 12:30 p.m. on January 16, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 9, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On January 16, 2002, from 10:45 a.m. to 11:30 a.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss the reports of the review of individual research programs in the Division of Emerging and Transfusion Transmitted Diseases, Office of Blood Research and Review, Center for Biologics Evaluation and Research.

FDA regrets that it was unable to publish this notice 15 days prior to the January 16, 2002, Blood Products Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Blood Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 26, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–32253 Filed 12–27–01; 5:02 pm]

BILLING CODE 4160–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: November 2001

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of November 2001, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services(other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
Program-Related Convictions	
Bilenkin, Elana ..... Old Bridge, NJ	12/20/2001
Birdsong, Stacie ..... Detroit, MI	12/20/2001
Bitz, Jennifer M ..... Jamestown, ND	12/20/2001
Boguslavskiy, Vadim ..... Lavenel, NJ	12/20/2001
Brown, Maurice Chevale ..... Sterling, CO	12/20/2001
Dallakyan, Naira M ..... Pasadena, CA	12/20/2001
Greer, J Randall ..... Memphis, TN	12/20/2001
Gutman, Marci ..... Miami, FL	12/20/2001
Maddox, Yolanda Gail ..... Troy, AL	12/20/2001
McDonald, Anita Fletcher ..... Palestine, TX	12/20/2001
New York Health Plan ..... New York, NY	12/20/2001
Norman, Brigid ..... Riverdale, GA	12/20/2001
Paulin, John Gregory ..... Florence, CO	12/20/2001
Rapp, Donna Lynn ..... Lakewood, CO	12/20/2001
Reyes, Gloria ..... Miami, FL	12/20/2001
Rose, Melba L ..... Miami, FL	12/20/2001
Scarpitta, Janet ..... Newark, NJ	12/20/2001
Stolyar, Yelena ..... Golden, CO	12/20/2001
Taylor, Shirley Jean ..... Pearl, MS	12/20/2001
Urban, Edward J ..... Chargin Fall, OH	12/20/2001
Felony Conviction for Health Care	
Brathwaite, Stephen Earl ..... W Valley City, UT	12/20/2001
Burstein, Donald A ..... Warminster, PA	12/20/2001
Casiano, Janet ..... Carle Place, NY	12/20/2001
Fergusson, Olantungie Clarence ..... Sherman Oaks, CA	12/20/2001
Oldham, Susan G ..... Lexington, KY	12/20/2001
Runk, Lisa D ..... Wichita, KS	12/20/2001
Seals, Carlos V ..... Los Angeles, CA	12/20/2001
Felony Control Substance Conviction	
Davis, Donna K Kidd ..... Somerset, KY	12/20/2001
Gleason, Laura Jane ..... Phoenix, AZ	12/20/2001
Hendrick, Vickie ..... Gallatin, TN	12/20/2001
McMenamin, Deborah J ..... Carbondale, PA	12/20/2001
Sommer, Deborah Jane ..... Dayton, TX	12/20/2001
Patient Abuse/Neglect Convictions	
Barsuk, Joseph Jr ..... Churchville, NY	12/20/2001
Boykins, Loretta Penny ..... Baltimore, MD	12/20/2001
Cathey, Deborah	12/20/2001

Subject city, state	Effective date
Nashville, TN	
Coleman, Tracy Lavonne Laurora, CO	12/20/2001
Conyers, Leonard E Wilmington, DE	12/20/2001
Dickinson, Sharon Lee Corunna, MI	12/20/2001
Ferdon, Michael Kevin Ontario, OR	12/20/2001
Kegel, Alan Wheeling, IL	12/20/2001
Lembong, Noky Herems Diamond Bar, CA	12/20/2001
Maxian, Therese M Binghamton, NY	12/20/2001
Pawlak, Patricia Barker, NY	12/20/2001
Quinones, Anel Garfield, NJ	12/20/2001
Risley, Charles S Saugerties, NY	12/20/2001
Stocker, Charles Edward Lancaster, OH	12/20/2001
Thompson, Robert J Raymond, MS	12/20/2001
Watson, Marlene Maria Bronx, NY	12/20/2001
Conviction for Health Care Fraud	
Plyter, Mark Williamson, NY	12/20/2001
License Revocation/Suspension/ Surrendered	
Amundson, Terri Sue Lawrenceville, GA	12/20/2001
Banda-Orman, Selina Des Moines, IA	12/20/2001
Barolin, Linda Mantua, NJ	12/20/2001
Bealer, Mildred Sitch Pottsville, PA	12/20/2001
Bell, Donna S Douglas, AK	12/20/2001
Bryant, Laurie L Davenport, IA	12/20/2001
Burgess, Marleen K Cresco, IA	12/20/2001
Carico, Paula J Kendallville, IN	12/20/2001
Cigelske, Michael Allen Phoenix, AZ	12/20/2001
Duffie, Brenda L Burlington, IA	12/20/2001
Dykes, Judy R Phoenix, AZ	12/20/2001
Garrett, Herman Alpha Norcross, GA	12/20/2001
Harple, Carol Weiler Gordonville, PA	12/20/2001
Hernandez, Stephen Louis Hudson, FL	12/20/2001
Heuberger, Sally Sheffield, IA	12/20/2001
Hummell, Alan Cocoa, FL	12/20/2001
Jewkes, Mindy Salt Lake City, UT	12/20/2001
Kadish, William A Shrewsbury, MA	12/20/2001
Larson, Richard Warren Cherokee Village, AR	12/20/2001
Leonard, Rhonda Lynn Tyler, TX	12/20/2001
Long, Jill Suzanne W Blocton, AL	12/20/2001
Lucero, Glen M Denver, CO	12/20/2001
McGraw, Daniel P Haverhill, MA	12/20/2001
Milam, Stephen Robert Cicero, IN	12/20/2001
Moore, Jerry Gayle Houston, TX	12/20/2001
Newman, William T Chapel Hill, NC	12/20/2001
Petanovich, E John Emlenton, PA	12/20/2001
Peyton, Bret W Iowa Falls, IA	12/20/2001
Porter, Mary Jo Norfolk, VA	12/20/2001
Rice, Cynthia M Phoenix, AZ	12/20/2001
Richardson, Lawrence John Los Angeles, CA	12/20/2001
Rollins, Jane Michigan City, IN	12/20/2001
Shellhase, Barbara J Cleona, PA	12/20/2001
Spencer, Craig A Frankfort, IL	12/20/2001
Sugden, Mark F Virginia Beach, VA	12/20/2001
Tabotabo, Armando M Keyport, NJ	12/20/2001
Vail, Sheree Behr Malvern, PA	12/20/2001
Wehby, Michael Daniel Fort Thomas, KY	12/20/2001
West, Malynda Susan San Francisco, CA	12/20/2001
Fraud/Kickbacks	
Rousseau, Andre M Chicago, IL	09/10/2001
Entities Owned/Controlled By Convicted	
Arroyo Chiropractic Arroyo Grande, CA	12/20/2001
Carlin Chiropractic Health Ctr San Antonio, TX	12/20/2001
Cosmetic Surgery & Laser Inst Tustin, CA	12/20/2001
Gregory W Stephens, D C, P C Houston, TX	12/20/2001
Lund Chiropractic Arlington, TX	12/20/2001
Martin Family Chiropractic Ctr Cameron Park, CA	12/20/2001
Y & L Corporation Denver, CO	12/20/2001
Default on Heal Loan	
Alams, Humphrey A Jr Seattle, WA	12/20/2001
Anillo-Sarmiento, Manuel F Miami, FL	12/20/2001
Baron, Spencer H N Miami Beach, FL	12/20/2001
Bell, Robert E Phoenix, AZ	12/20/2001
Bornstein, Mark L Pembroke Pines, FL	12/20/2001
Buckingham, Guy M Orleans, MI	12/20/2001
Dauphin, Michelle M Pembroke Pines, FL	12/20/2001
Dinozzi, Anthony D Batavia, OH	12/20/2001
Dupuis, Edward J Dallas, TX	12/20/2001
Evans, Charla J Mobile, AL	12/20/2001
Ferguson, Camilla M Fairborn, OH	12/20/2001
Fredericks, Duane A Philadelphia, PA	12/20/2001
Fryer, Thomas J Ferron, UT	12/20/2001
Gilyot, Glenn David Sr New Orleans, LA	12/20/2001
Hansen, Hunter J Andrews, NC	12/20/2001
Havriliak, Stephen J Huntingdon Valley, PA	12/20/2001
Huber, Mark Princeton, MN	12/20/2001
Kardelis, Eugene C Jr Nazareth, PA	12/20/2001
Kardos, William P Apollo, PA	12/20/2001
Knott, Kevin Thomas Jr Oceanside, CA	12/20/2001
Kron, Kathy A Norton, MA	12/20/2001
Lallouz, Solomon Y Hollywood, FL	12/20/2001
Lantz, Larry S Broomall, PA	12/20/2001
Leavitt, Albert M Jr Alexandria, VA	12/20/2001
Legault, Michelle A Coon Rapids, MN	12/20/2001
Leon, Maria I Hollywood, FL	12/20/2001
Levy, Richard S Forthee, NJ	12/20/2001
Milbourne, Michael W Lafayette Hill, PA	12/20/2001
Milot, Sheila Inez Vernon Hills, IL	12/20/2001
Moore, Charles E Kansas City, KS	12/20/2001
O'Brien, Matthew P Romeo, MI	12/20/2001
Parenti, Lisa C Nashville, TN	12/20/2001
Parker, Melissa M Clinton, NC	12/20/2001
Parsons, Tien M Marathon, FL	12/20/2001
Payne, Carrol D Memphis, TN	12/20/2001
Pitts, Angela R Odessa, FL	12/20/2001
Powell, Michael N Wollaston, MA	12/20/2001
Pugh, Melvoria C Mobile, AL	12/20/2001
Ray, Donald Elton Orange Beach, AL	12/20/2001
Richichi, Mark S Ctr Moriches, NY	12/20/2001
Roberts, Pamela Charlotte, NC	12/20/2001

Subject city, state	Effective date
Robinson, Cynane Ann Yetta ... Southfield, MI	12/20/2001
Rodebaugh, Cheryl Lynn ..... Denver, CO	12/20/2001
Rose, Keith D ..... Big Rapids, MI	12/20/2001
Roudebush, Mark D ..... Cordova, TN	12/20/2001
Rouselle, Dionne Marie ..... Memphis, TN	12/20/2001
Rubinstein, David M ..... Tamarac, FL	12/20/2001
Schwirian, Jay A ..... White Oak, PA	12/20/2001
Smith, Terrance Herbert ..... Sioux Falls, SD	12/20/2001
Smith, William H III ..... Philadelphia, PA	12/20/2001
Sparks, Darlene V ..... Annandale, VA	12/20/2001
Stevens, Joanne K ..... Broadview Hgts, OH	12/20/2001
Strasser, Robert T ..... Lake Zurich, IL	12/20/2001
Thompson, Emma R ..... Lithonia, GA	12/20/2001
Van Brookhoven, Gloria ..... Atlanta, GA	12/20/2001
Vodvarka, James M ..... Steubenville, OH	12/20/2001
Webb, James R ..... Shawnee Mission, KS	12/20/2001
Wohlschlaeger, Michael Alan ... Panama City Bch, FL	12/20/2001
Wolf, Jacob M ..... Akron, OH	12/20/2001
Wright, Bill G ..... Lincoln, NE	12/20/2001
Yoder, Patricia L ..... Ocklawaha, FL	12/20/2001
Young-Cheney, Joan E ..... Creswell, OR	12/20/2001
Peer Review Organization Cases	
Hinkley, Bruce Stanton ..... Dallas, TX	11/14/2001

Dated: December 3, 2001.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 01–32156 Filed 12–31–01; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Peter A. Soukas, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 268; fax: 301/402–0220; e-mail: *soukasp@od.nih.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

LL–37 is an Immunostimulant

Oleg Chertov (NCI), Joost Oppenheim (NCI), De Yang (NCI), Qian Chen (NCI), Ji Wang (NCI), Mark Anderson (EM), Joseph Wooters (EM)

Serial No. 09/960,876 filed 21 Sep 2001

This invention relates to use of an antimicrobial peptide as a vaccine adjuvant. LL–37 is the cleaved antimicrobial 37-residue C-terminal peptide of hCAP18, the only identified member in humans of a family of proteins called cathelicidins. LL–37/hCAP18 is produced by neutrophils and various epithelial cells. LL–37 is well known as an antimicrobial peptide. However, although antimicrobial peptides have generally been considered to contribute to host innate antimicrobial defense, some of them may also contribute to adaptive immunity against microbial infection. The inventors have shown that LL–37 utilizes formyl peptide receptor-like 1 (FPLR1) as a receptor to activate human neutrophils, monocytes, and T cells. Since leukocytes participate in both innate and adaptive immunity, the fact that LL–37 can chemoattract human leukocytes may provide one additional mechanism by which LL–37 can contribute to host defense against microbial invasion, by participating in the recruitment of leukocytes to sites of infection. The invention claims methods of enhancing immune responses through the administration of LL–37 alone, in conjunction with a vaccine, and methods of treating autoimmune diseases. The invention is further described in Chertov et. al., ''LL–37, the neutrophil granule- and epithelial cell-derived cathelicidin, utilizes formyl peptide receptor-like 1 (FPRL1) as a receptor to chemoattract human peripheral blood neutrophils, monocytes, and T cells,'' J Exp. Med. 2000 Oct 2;192(7):1069–74.

A Method for Bioconjugation Using Diels-Alder Cycloaddition

Vince Pozsgay (NICHD)

Serial Number 09/919,637 filed 01 Aug 2001

This invention relates to a new method for the synthesis of conjugate vaccines using the Diels-Alder cycloaddition reaction to covalently attach a carbohydrate antigen from a pathogen to a protein carrier. The Diels-Alder reaction has not been extended to conjugation involving biopolymers or other types of polymeric materials. Advantages of this method are that cross-linking during conjugation is entirely avoided in addition to the mild chemical conditions under which this synthesis method proceeds. Diels-Alder reactions commonly take place in high-temperature environments; the method contemplated by this invention takes place at much lower temperatures. In addition to claiming methods of synthesis for conjugate vaccines using the Diels-Alder cycloaddition, the patent application claims vaccines produced utilizing the method, and methods of inducing antibodies which react with the polysaccharides contemplated by the invention.

Identification of New Small RNAs and ORFs

Susan Gottesman (NCI), Gisela Storz (NICHD), Karen Wassarman (NICHD), Francis Repoila (NCI), Carsten Rosenow (EM)

Serial No. 60/266,402 filed 01 Feb 2001

The inventors have isolated a number of previously unknown sRNAs found in E. coli. Previous scientific publications by the inventors and others regarding sRNAs have shown these sRNAs to serve important regulatory roles in the cell, such as regulators of virulence and survival in host cells. Prediction of the presence of genes encoding sRNAs was accomplished by combining sequence information from highly conserved intergenic regions with information about the expected transcription of neighboring genes. Microarray analysis also was used to identify likely candidates. Northern blot analyses were then carried out to demonstrate the presence of the sRNAs. Three of the sRNAs claimed in the invention regulate (candidates 12 and 14, negatively and candidate 31, positively) expression of RpoS, a major transcription factor in bacteria that is important in many pathogens because it regulates (amongst other things) virulence. The inventors' data show that these sRNAs are highly

conserved among closely related bacterial species, including Salmonella and Klebsiella, presenting a unique opportunity to develop both specific and broad-based antibiotic therapeutics. The invention contemplates a number of uses for the sRNAs, including, but not limited to, inhibition by antisense, manipulation of gene expression, and possible vaccine candidates.

Peptides that Stabilize Protein Antigens and Enhance Presentation to CD8+ T Cells

Roger Kurlander, Elizabeth Chao, Janet Fields (CC)

DHHS Reference No. E–172–99/1 filed 12 Dec 2000 (PCT/US00/33027, published as WO 01/40275), with priority to 06 Dec 1999

This invention relates to compositions and methods for stabilizing an antigen against proteolytic degradation and enhancing its presentation to CD8+ cells. The invention claims ''fusion agents,'' isolated molecules comprising a hydrophobic peptide joined to an epitope to which a CD8+ T cell response is desired. Also claimed in the invention are the nucleic acid sequences that encode the fusion agents. Recently, there has been great interest in developing vaccines to induce protective CD8+ T cell responses, however, there are practical obstacles to this goal. Although purified antigenic peptides are effectively presented in vitro, introduced in a purified form they often do not stimulate effective T cell responses in vivo because the antigens are insufficiently immunogenic and too easily degraded. Adjuvants or infectious ''carriers'' often can enhance these immune responses, however, these added agents can cause unacceptable local or systemic side effects. The present invention increases antigen stability and promotes in vivo responses in the absence of an adjuvant or active infection.

The invention describes three variants of lemA, an antigen recognized by CD8+ cells in mice infected with Listeria monocytogenes. The antigenic and stabilizing properties of lemA can be accounted for by the covalent association of the immunogenic aminoterminal hexapeptide with the protease resistant scaffolding provided by amino acids 7 to 33 of the lemA sequence (lemA(7–33)). Variants t-lemA, and s-lemA bearing an antigenic sequence immediately preceding lemA(7–33), and lemS containing an immunogenic sequence immediately after lemA(7–33), each induce a CD8+ T cell response and protect the crucial immunogenic oligopeptide from protease degradation. The site of antigen insertion relative to lemA(7–33) can influence antigen processing by preferentially promoting processing either in the cytoplasm or endosomal compartment. Therefore, several embodiments of the invention involve the construction of antigen processing protein molecules and their methods of use. Alternatively, a DNA sequence coding lemA(7–33) may be inserted at an appropriate site to enhance the immunogenicity of the antigenic element coded by a DNA vaccine. In sum, this invention is an attractive, nontoxic alternative to protein/adjuvant combinations in eliciting CD8 responses in vivo and a useful element for enhancing the efficiency with which products coded by DNA vaccines are processed and presented in vivo. Because lemA(7–33) is particularly effective in protecting oligopeptides from proteases, this invention may have particular usefulness in enhancing local T cell at sites such as mucosal surfaces where there may be high proteolytic activity.

For more specific information about the invention or to request a copy of the patent application, please contact Peter Soukas at the telephone number or e-mail listed above. Additionally, please see a related article published in the Journal of Immunology at: 1999;163:6741–6747.

Vibrio cholerae O139 Conjugate Vaccines

Shousun Szu, Zuzana Kossaczka, John Robbins (NICHD)

DHHS Reference No. E–274–00/0 filed 01 Sep 2000 (PCT/US00/24119)

Cholera remains an important public health problem. Epidemic cholera is caused by two Vibrio cholerae serotypes O1 and O139. The disease is spread through contaminated water. According to information reported to the World Health Organization in 1999, nearly 8,500 people died and another 223,000 were sickened with cholera worldwide. This invention is a polysaccharide-protein conjugate vaccine to prevent and treat infection by Vibrio cholerae O139 comprising the capsular polysaccharide (CPS) of V. cholerae O139 conjugated through a dicarboxylic acid dihydrazide linker to a mutant diphtheria toxin carrier. In addition to the conjugation methods, also claimed in the invention are methods of immunization against V. cholerae O139 using the conjugates of the invention. The inventors have shown that the conjugates of the invention elicited in mice high levels of serum antibodies to CPS, a surface antigen of Vibrio cholerae O139, that have vibriocidal activity. Clinical trials of the two most immunogenic conjugates have been planned by the inventors. This invention is further described in Infection and Immunity 68(9), 5037–5043, Sept. 2000.

Dated: December 19, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–32170 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: December 21, 2001.

Time: 8:30 am to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: December 21, 2001.

Time: 3:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32160 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: January 15–16, 2002.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Aftab A. Ansari, PhD., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25S, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32161 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: January 14, 2002.

Time: 1:30 am to 3:30 pm.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David I Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, *dsommers@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32162 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodation, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: January 24-25, 2002.

Closed: January 24, 2002, 10:30 am to recess.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: January 25, 2002, 8 am to adjournment.

Agenda: Presentation of NIMH Acting Director's report and discussion of NIMH program, and policy issues.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed

and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's homepage: *www.nimh.nih.gov/council/advis.cfm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32163 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: January 8–9, 2002.

Time: 7:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Cambridge Hotel, 575 Memorial Drive, Cambridge, MA.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: January 16–17, 2002.

Time: 7 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Fitzpatrick Manhattan Hotel, 687 Lexington Avenue, New York, NY 10022.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32164 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Adviser Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: January 16–17, 2002.

Open: January 16, 2001, 1 p.m. to 5 p.m.

Agenda: For discussion of program policies and issues.

Place: 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: January 17, 2002, 9:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Mary Leveck, PhD, Deputy Director, NINR, NIH, Building 31, Room 5B05, Bethesda, MD 20892, (301) 594–5963.

Information is also available on the Institute's/Center's homepage: *www.nih.gov/ninr/a_advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health.

Dated: December 20, 2001

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32166 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: January 22, 2002.
Time: 11:30 am to 1:00 pm.
Agenda: To review and evaluate grant applications.
Place: 45 Center Drive, Natcher Building, Conference Room E1/2, Bethesda, MD 20892.
Contact Person: John R. Lymangrover, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4552.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32167 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine Subcommittee on Outreach and Public Information.
Date: February 12, 2002.
Open: 7:30 am to 8:30 am.
Agenda: Program documents.
Place: National Library of Medicine, 8600 Rockville Pike, Conference Room B, Bethesda, MD 20892.
Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine.
Date: February 12–13, 2002.
Open: February 12, 2002, 9:00 am to 4:30 pm.
Agenda: Administrative Reports and Program Discussion.
Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.
Closed: February 12, 2002, 4:30 pm. to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.
Open: February 13, 2002, 9:00 am to 12:00 pm.
Agenda: Administrative Reports and Program Discussion.
Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.
Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.
Date: February 12, 2002.
Closed: 12:00 pm. to 1:00 pm.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, Building 38A, HPCC Conference Room B1N30Q, 8600 Rockville Pike, Bethesda, MD 20894.
Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's homepage: *www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32168 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Special Review Panel—Telephone Conference (ZLM1 MMR P J2).
Date: January 15, 2002.
Time: 3 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, (Telephone Conference Call).
Contact Person: Merlyn M Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32169 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public as indicated below, with attendance limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended, for discussion of personal qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center.

Date: January 25, 2002.

Open: 9 am to 12 pm.

Agenda: For discussion of programmatic policies and issues.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 12 pm to 1 pm.

Agenda: To review and evaluate personnel qualifications.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Information is also available on the Institute's/Center's homepage: *www.cc.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32165 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Workplace Helpline Call Record Form and Followup Survey

New—The Workplace Helpline is a toll-free, telephone consulting service which provides information, guidance and assistance to employers, community-based prevention organizations and labor offices on how to deal with alcohol and drug abuse problems in the workplace. The Helpline was required by Presidential Executive Order 12564 and has been operating since 1987. It is located in the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention (CSAP), where it is managed out of the Division of Workplace Programs.

Callers access the Helpline service through one of its Workplace Prevention Specialists (WPS) who may spend up to 30 minutes with a caller, providing guidance on how to develop a comprehensive workplace prevention program (written policy, employee assistance program services, employee education, supervisor training, and drug testing) or components thereof. When a call is received, the WPS uses a Call Record Form to record information about the call, including the name of the company or organization, the address, phone number, and the number of employees. Each caller is advised that their responses are completely voluntary, and that full and complete consultation will be provided by the WPS whether or not the caller agrees to answer any question. To determine if the caller is representing an employer or other organization that is seeking assistance in dealing with substance abuse in the workplace, each caller is asked for his/her position in the company/organization and the basis for the call. In the course of the call, the WPS will try to identify the following information: basis or reason for the call (i.e., crisis, compliance with State or Federal requirements, or just wants to implement a prevention program or initiative); nature of assistance requested; number of employees and whether the business has multiple locations; and the industry represented by the caller (e.g., mining, construction, etc.). Finally, a note is made on the Call Record Form about what specific type(s) of technical assistance was given.

Callers to the Helpline may not, for a variety of reasons, contact the Helpline to describe any successes or failures they are having in implementing any prevention initiatives discussed with the Helpline staff. In addition, CSAP wants to know if the Helpline service is working as intended. Accordingly, the Helpline staff contacts a sample of callers to discuss the caller's progress in taking action based on the Helpline consultation, and whether or not they were satisfied with the Helpline service. Callers are told the reasons for the call and that their responses to questions are completely voluntary. If the caller is willing to participate, they are asked about the actions, if any, they took as a result of the consultation with the Helpline and if there were any obstacles to taking the desired action, such as resistance from employees and lack of time. The callers are also asked several questions to help determine if the consultation was useful and if the Helpline staff was helpful, and whether or not they would refer others to the Helpline. The annual average burden associated with the Helpline Call Record and Followup Survey are summarized below.

Form	Number of responses	Responses/ respondent	Burden/ response (hrs.)	Total burden (hrs.)
Call Record Form	4,200	1	.250	1,050
Followup Survey	960	1	.167	160
Total	4,200			1,210

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 20, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–32172 Filed 12–31–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4653–N–12]

Notice of Proposed Information Collection for Public Comment: Housing Choice Voucher Tenant Accessibility Study: 2002–2003

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice

SUMMARY: The proposed information collection requirement concerning a project to obtain information on the Housing Choice Voucher Tenant Accessibility Study 2002–2003 will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 4, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Dianne Thompson, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8154, Washington, DC 20410, telephone number (202) 708–5537 extension 5863 (this is not a toll-free number). Copies of the proposed forms and other available documents may be obtained from Ms. Thompson.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Housing Choice Voucher Tenant Accessibility study: 2002–2003.

Description of the need for the information and proposed use: The primary purpose of the proposed data collection is to develop a mail questionnaire for HUD that can be used with a national sample of Housing Choice Voucher tenants with physical disabilities to determine their satisfaction with the search process and the quality of their housing unit.

Members of affected public: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Task	Number of respondents	Frequency of responses	Hours per response	Burden hours
Questionnaire	400	once	25	50

Total Estimated Annual Burden Hours: 50 (one time).

Status of the proposed information collection: Pending OMB approval.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 21, 2001.

Lawrence L. Thompson,

General Deputy Assistant Secretary, for Policy Development and Research.

[FR Doc. 01–32192 Filed 12–31–01; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–19]

Housing Opportunities for Persons With AIDS Program; Announcement of Funding Award FY 2001

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this notice announces the funding decisions made by the Department under the Fiscal Year 2001 Housing Opportunities for Persons with AIDS (HOPWA) program. The notice announces the selection of 22 renewal applications, three new project applications, and three technical assistance applications under the three 2001 HOPWA national competitions which were announced under the Super Notice for HUD's Housing Community Development and Empowerment Programs and published in the **Federal Register** on February 26, 2001. The notice contains the names of award winners, describes grant activities and provides the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: David Vos, Director, Office of HIV/AIDS Housing, Department of Housing and Urban Development, Room 7212, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1934. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–2565. (Telephone numbers, other than ''800'' TTY numbers are not toll free.) Information on HOPWA, community development and consolidated planning, and other HUD programs may also be obtained from the HUD homepage on the World Wide Web. In addition to this competitive selection, 105 jurisdictions received formula based allocations during the 2001 fiscal year for $229.372 million in HOPWA funds. Descriptions of the formula programs is found at *www.hud.gov/offices/cpd/aidshousing.*

SUPPLEMENTARY INFORMATION: The purpose of the HOPWA program competition was to award project grants for the renewal continuing activities or for new projects that provide housing assistance and supportive services. Grants are made under two categories of assistance: (1) grants for special projects

of national significance which, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the needs of low-income persons living with HIV/AIDS and their families; and (2) grants for projects which are part of long-term comprehensive strategies for providing housing and related services for low-income persons living with HIV/AIDS and their families in areas that do not receive HOPWA formula allocations. The purpose of the technical assistance competition was to select qualified providers to support the national goal for the sound management of the HOPWA program.

Under this year's competition HUD was required to renew all existing grants that were expiring in 2001 and if funding remained after funding eligible HOPWA renewal projects, HUD would consider applications for new HOPWA projects. A total of $21.5 million was awarded to the 22 eligible renewal grants. The remaining amount of $3.9 million, plus $107,526 in recaptured funds was made available to the three highest rated HOPWA competitive applications for new projects.

The HOPWA assistance made available in this announcement is authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and was appropriated by the HUD Appropriations Act for 2001. The competition was announced in a Super Notice for HUD's Housing Community Development and Empowerment Programs published in the **Federal Register** on February 26, 2000 (66 FR 12223). Each application was reviewed and rated on the basis of selection criteria contained in that NOFA.

Public Benefit

The award of HOPWA funds to the 22 renewal projects, three new projects and three Technical Assistance awards will significantly contribute to HUD's mission in supporting projects that provide safe, decent and affordable housing for persons living with HIV/AIDS and their families who are at risk of homelessness. The projects proposed to use HOPWA funds to support the provision of housing assistance to an estimated 2,777 low-income people with HIV/AIDS and their families. In addition, an estimated 2,985 persons with HIV/AIDS are expected to benefit from some form of supportive service or housing information referral service that will help enable the client to maintain housing and avoid homelessness. The recipients of this assistance are expected to be very-low income or low-income households. These 25 applicants also documented that the Federal funds awarded in this competition, $25.5 million, will leverage an additional $38 million in other funds and non-cash resources including the contribution of volunteer time in support of these projects, valued at $10/hour. The leveraged resources will expand the HOPWA assistance being awarded by 149 percent.

A total of $25.5 million was awarded to 25 organizations to serve clients in the twenty-four listed States and $1.9 million for technical assistance activities across the nation.

In accordance with section 102(a) (4) (C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

FY 2001 HOPWA Renewal Awards by State

Alabama

AIDS Alabama, Inc. of Birmingham will receive a HOPWA renewal grant for $899,180 to continue the Alabama Rural AIDS Project (ARAP) to: (1) Outreach to eligible HIV positive, low-income persons; (2) link them with medical and supportive services, and (3) house (ultimately permanently) those HIV-positive, low-income persons who are homeless or marginally housed in the state's 35 most rural counties. ARAP will house 300 low-income, homeless persons with HIV/AIDS and 300 additional family members and provide 1,400 persons with supportive services over the three years of the project. AIDS Alabama will partner in this project with AIDS Services Centers of Anniston, AIDS Action Coalition of Huntsville, Montgomery AIDS Outreach, Mobile AIDS Support Services, East Alabama AIDS Outreach of Auburn, and West Alabama AIDS Outreach of Tuscaloosa. All partners are members of the AIDS Service Organization Network of Alabama. For information contact: AIDS Alabama, Inc. P.O. Box 55703; 3521 7th Avenue South Birmingham, AL 35222. Mr. Randall H. Russell, MSW, LGSW Executive Director; Phone: (205) 324–9822; Fax: (205) 324–9311; E-mail: *randall@aidsalabama.org.*

Arizona

The Pima County, Community Services Department will receive a HOPWA renewal grant in collaborative effort of Pima County and two project sponsors: the Southern Arizona AIDS Foundation (SAAF), and the City of Tucson. The project is designed to create a continuum of care for people who are low-income and HIV+, and their families, by filling gaps in both housing and services in Tucson and Pima County. Recognizing the importance of stable housing, the two primary goals of the Positive Directions project are: (1) to increase independence through subsidized, supportive housing; and (2) to maximize self-sufficiency through intensive, personalized services. The project addresses these through three key components: transitional housing; long-term rent subsidies; and support and referral services through intensive case management. For information contact: Pima County, Community Services Department, 32 North Stone Avenue, Suite 1600, Tucson, AZ 85701; Gary Bachman, (520) 740–5205 or by E-mail: *gbachman@csd.co.pima.az.s.*

California

In Los Angeles, the West Hollywood Community Housing Corporation will receive a HOPWA renewal grant for $630,535. Funds will be used to continue the Los Angeles Consortium for Service-Coordinated AIDS Housing, a collaboration of four nonprofit agencies providing permanent, supportive housing to very low-income persons living with HIV/AIDS. The three other partner agencies are the Hollywood Community Housing Corporation, Project New Hope and the Skid Row Housing Trust. Funding supports an Enhanced Management Model program, as well as expand services that promote long-term residential stability with residential and vocational service coordinators and an on-site learning program focused on computer skills. The project makes use of life skills development, and employment training and placement opportunities with permanent affordable housing to reach residents in at least 468 units at 26 sites over this grant period. For information contact: West Hollywood Community Housing Corporation, 8285 Sunset Blvd., Suite 3 West Hollywood, CA 90046. Mr. Lee Meyers, Director of Resident Services; Phone: (323) 650–8771 x13; Fax: (323) 650–4745; E-mail: *lee@whchc.org.*

The County of San Diego, Department of Housing and Community Development (DHCD) will receive a HOPWA renewal grant for $308,116 to continue the La Posada Project. DHCD works with the County Health and Human Services Agency and the Office of AIDS Coordination. The project provides service enriched housing opportunities throughout San Diego County to homeless and very low-

income HIV positive women and their children who have not participated in either the HIV or the homeless service delivery systems. The program provides operating costs, addiction services coordination, resident services coordination, and longitudinal outcome evaluation. The original grant supported the rehabilitation of 24-units in apartment complexes, which focus on needs for women and their children. The project will also continue to provide services to a minimum of six to twelve families at Fraternity House, Inc., a licensed residential care facility, and 12 families at La Posada Apartments with services from South Bay Community Services. An additional 100 clients will receive out-patient addiction counseling and recovery services and case management support through Stepping Stone of San Diego, Inc. For information contact: County of San Diego Department of Housing and Community Development, 3989 Ruffin Road, San Diego, CA 92134–1890. Ms. Marilee Hansen, Housing Program Analyst; Phone: (858) 694–8712; E-mail: *mhanse@co.san-diego.ca.us.*

In San Francisco, Lutheran Social Services of Northern California will receive a HOPWA renewal grant for $1,014,080 to continue The Bridge Project, a six-agency collaboration that provides transitional housing while addressing the complex service needs of indigent, multiply-diagnosed clients living with HIV/AIDS. The goals of the Bridge Project are threefold: (1) Increase the quantity and quality of housing for homeless, multiply-diagnosed persons with HIV/AIDS; (2) Provide direct access to health care, substance abuse counseling, mental health care, and benefits counseling for underserved multiply-diagnosed populations, and (3) Deliver these services through an integrated system of care which is cost-effective and meets the complex needs of the multiply-diagnosed client. With success in achieving its original goals, a renewal grant for one of the Multiple Diagnosis Initiative (MDI) Projects from HUD will enable this partnership to continue providing stable housing to current number of participants. For information contact: Lutheran Social Services of Northern California, 433 Hegenberger Road, #103 Oakland, CA 94621; Mr. Kevin Fautaux, Director, San Francisco Office; Phone: (415) 581–0891 ext. 103 Fax: (415) 581–0898; E-mail: *LSSkfaut@aol.com.*

In San Francisco, the Bernal Heights Neighborhood Center, Housing Services Affiliate will receive a HOPWA renewal grant for $692,648 to continue the operation of Positive MATCH. As one of the Multiple Diagnosis Initiative (MDI) Projects, this effort has provided a nationally significant model of integrated services and care for homeless multiply diagnosed mothers and children living with HIV. The innovative network of services and housing provides a specialized continuum of care for families that comprehensively addresses the needs of the family prior to and after the death of the infected parent. The project is an innovative collaborative project between a housing developer and four social service agencies skilled at providing social, legal, and mental health services for multiply diagnosed homeless women with HIV and their children. In October of 2001, the collaborative will complete the rehabilitation of the seven unit multi-bedroom permanent housing facility. Positive MATCH is seeking renewal funding to continue the provision of the integrated and replicable continuum of care that ensures permanent exits from homelessness. For information contact: Housing Services Affiliate-Bernal Heights Neighborhood Center, 515 Cortland Ave., San Francisco, CA 94110. Ms. Mary Dorst, Housing Project Manager; Phone: (415) 206–2140 ext. 147; Fax: (415) 648–0793; E-mail: *bernaldev@aol.com.*

Connecticut

The City of Bridgeport, Central Grants Office, will receive a HOPWA renewal grant for $1,312,821. The City will be coordinating with seven (7) project sponsors, in continuing support to 50 households under one of the Multiple Diagnosis Initiative (MDI) Projects. Under the Bridgeport AIDS/HIV Housing Initiative, the seven project sponsors include Prospect House, Bethel Recovery Center, and Alpha Home who are the housing providers; Helping Hand Center, Catholic Family Services, and Evergreen Network who are support service providers, and the Connecticut AIDS Residence Coalition which provides technical assistance and resource identification services. Based on the number of people served from the original HOPWA grant, these organizations anticipate that it will provide emergency services to a minimum of 175 multiple diagnosed persons with HIV/AIDS, and provide housing services to 60 multiply diagnosed individuals and families, through the project's unique Transitional Living Program (TLP). For information contact: City of Bridgeport, Central Grants Office, 999 Broad Street, Bridgeport, CT 06604; Kathleen Hunter, Assistant Director, Social Services; Phone (203) 576–8475, Fax (203) 567–8405; E-mail: *huntek0@ci.bridgeport.ct.us.*

District of Columbia

The Whitman-Walker Clinic, Inc. of Washington, DC will receive a HOPWA renewal grant for $1,139,255 to continue the Bridge Back Program a residential treatment facility for multiply diagnosed men and women with HIV/AIDS, substance abuse, and persistent mental illness. DC Bridge Back offers six months of intensive addiction treatment, medical, and psychosocial services for up to eight residents at a time. Bridge Back is a safe and supportive link back to appropriate housing in the community for people living with HIV/AIDS who suffer from severe substance abuse and chronic mental illness. Staff and clients work collaboratively to establish a treatment plan while in the program, and a discharge plan including appropriate housing and accessibility of supportive services in the community upon leaving the program. For information contact: Whitman-Walker Clinic, Inc., 1407 S. Street, NW., Washington, DC 20009. Ms. Mary L. Bahr, Associate Executive Director; Phone: (202) 797–3515; Fax: (202) 797–3504; E-mail: *mbahr@wwc.org.*

Florida

The City of Key West Community Development Office will receive a HOPWA renewal grant for $1,188,500 to continue their housing voucher program for persons living with HIV/AIDS in Monroe County. The City partners with AIDS Help, Inc. in providing assistance to clients in this high cost housing market. This Special Project of National Significance was modeled after HUD's Section 8 program with support to provide for independence and self-determination for clients. The program serves an estimated 50 households each year through tenant-based rental assistance and residency in housing facilities. Additionally, for disabled persons who experience improved health due to medical treatment advances, support from other sources includes back to work training in collaboration with the Florida Keys Employment and Training Council. For information contact: City of Key West Community Development Office, 1403 12th Street, Key West, FL 33040. Ms. Lee-Ann Broadbent, Program Administrator; Phone: (305) 292–1221; Fax (305) 292–1162.

Georgia

The City of Savannah, Community Planning and Development Division, will receive renewal funding of

$1,229,636 to continue operating Project House Call. The City partners with Union Mission, Inc., and two project partners—Georgia Legal Services Program and Hospice Savannah—and operate activities within the 10-member Savannah-Chatham AIDS Continuum of Care. Assistance is based on the use of a 10-unit community residence and short-term housing payments for 75 households. Under the original grant, this program prevented homelessness for 213 unduplicated individuals with HIV/AIDS who enrolled in Project House Call and received the provision of home-based services. The program provides services in the homes of PLWA/A's who might not otherwise have access to services within the Chatham/Effingham County areas. Project House Call is a lifeline for the population it serves, linking them with primary medical care, legal services, transportation assistance, substance abuse counseling, group therapies, and hospice services. For information contact: Community Planning and Development Division, Office of the City Manager, P.O. Box 1027, Savannah, GA 31402. Ms. Taffanye Young, Director; Phone: (912) 651–6520; Fax: (912) 651–6525; E-mail: *Taffanye_Young@ci.savannah.ga.us.*

Illinois

Cornerstone Services, Inc., of Joliet, will receive a HOPWA renewal grant of $789,160 to continue to provide scattered site permanent housing with supportive services for 16 households with persons living with HIV/AIDS who also have mental illness and who may be homeless. The program is located in Joliet and Cornerstone has partnered with the AIDS Ministry of Illinois (AMI), Stepping Stones (substance abuse treatment center) and Metro Infectious Disease Consultants (MIDC) to provide persons with HIV/AIDS and mental illness by offering a comprehensive array of services promoting choice, dignity, and the opportunity to live and work in the community. For information contact: Cornerstone Services, Inc., 777 Joyce Road, Joliet, IL 60436. Ms. Bette J. Reed Phone: (815) 741–6743; Fax: (815) 723–1177; E-mail: *breed@cornerstoneservices.org.*

Kentucky

The Division of Community Development for the Lexington-Fayette Urban County Government will received $1,362,860 to continue the AVOL AIDS Housing Program. This program provides housing, related case management, education and referrals, as well as transitional and supportive housing services for persons living with HIV/AIDS in Central and Eastern Kentucky. Activities are based at two housing facilities, Rainbow Apartments and Solomon House. Rainbow Apartments is a transitional housing program designed to respond to persons with HIV/AIDS who are homeless or at risk of homelessness and in need of a spectrum of supportive services while they work through issues that may have contributed to their homelessness. Solomon House is a community residence for individuals who require personal care, supervision and supportive services following an acute medical episode or who are in the advanced stages of their illness. Over the three year grant period, this program will serve 75 persons with HIV/AIDS through the housing facilities and an additional 300 individuals will receive housing information services. For information contact: Division of Community Development, Lexington-Fayette Urban County Government, 200 East Main Street Lexington, KY 40507. Ms. Irene Gooding, Grants Manager; Phone: (859) 258–3079; Fax: (859) 258–3081; E-mail: *ireneg@lfucg.com.*

Louisiana

UNITY for the Homeless of New Orleans will receive a HOPWA renewal grant for $1,216,896 to continue a program by six sponsor agencies, working within the community's extensive and well-established homeless continuum of care system to provide an integrated range of services and housing for persons with HIV/AIDS and their families who are homeless or at risk of becoming homeless. The Sponsors are the New Orleans AIDS Task Force, Project Lazarus, Children's Hospital FACES, Volunteers of America, Belle Reve and United Services for AIDS Foundation. The range of assistance to be provided includes: case management, mental health counseling, outreach services, day services, specialized employment services for person able to return to work, in-home and center-based respite care and residential substance abuse treatment for 18 individuals and two families. Direct housing support includes: residence at a care facility for 24 persons who are at the end stage of their illness, short-term rent, mortgage, utility assistance for 60 persons, and emergency shelter for 30. These AIDS housing efforts are also integrated with other homeless assistance programs operated by 45 agencies and coordinated through the City's continuum of care. For information contact: UNITY for the Homeless 2475 Canal Street, Suite 300 New Orleans, LA 70119; Ms. Margaret Reese, Executive Director; Phone: (504) 821–4496 ext.107; Fax: (504) 821–4709; E-mail: *pegreese@aol.com.*

Massachusetts

The AIDS Housing Corporation of Boston will receive a grant of $928,752 to continue SHARE 2000+, a cooperative partnership designed to meet the needs of HIV/AIDS housing programs and consumers in Greater Boston. SHARE 2000+ consists of four components: the Direct Care Relief Program, the Staff Development Program, the Donations Assistance Program, and the Staff Training Program. First funded in 1995, the program design is an innovative approach to capitalizing on existing expertise in the HIV/AIDS provider community and sharing resources to augment the efficiency and capacity of HIV/AIDS housing programs. Over the course of the grant period, SHARE 2000+ will provide services to 980 individuals and offer 4,000 hours of relief staffing. Share 2000+ consists of four core program components, representing four non-profit human service agencies: Direct Care Relief Program: Justice Resource Institute/JRI Health; Donations Assistance Program: Massachusetts Coalition for the Homeless; Staff Development Program: Victory Programs, Inc.; and Staff Training Program: AIDS Action Committee. For information contact: AIDS Housing Corporation, 29 Stanhope Street Boston, MA 02116. Joe Carleo Executive Director; Phone: (617) 927–0088 x31; Fax: (617) 927–0852; E-mail: *jcarleo@ahc.org.*

Maryland

The City of Baltimore, Department of Housing and Community Development, Office of Homeless Services will receive a HOPWA renewal grant for $1,363,136 to continue Back to Basics (B2B), a comprehensive case management program serving families in the Baltimore, MD who are dealing with the issues of HIV/AIDS, who are newly diagnosed (or newly disclosing their HIV status), who are in crisis, and who voluntarily elect to participate in an intensive case management program. Begun with the support of a 1998 SPNS grant, the goal is to empower families by helping them initially to meet their basic needs, such as food, clothing, and housing. Over time, help will be extended to develop client resources and skills to access the necessary healthcare and services to function as a unit, to maintain housing and economic stability in a safe environment and to live productive lives, for as long as possible. For information, contact:

Baltimore Office of Homeless Services, 417 E. Fayette Street Room 1211 Baltimore, MD 21202. Ms. Leslie Leitch Director, Phone: (410) 396–3757; Fax: (410) 625–0830; E-mail: *leslie.leitch@baltimorecity.gov.*

New Hampshire

Harbor Homes, Inc. of Nashau, New Hampshire will receive a HOPWA renewal grant for $447,057 to continue a HOPWA program that serves Hillsborough County, with the exception of Manchester. This area has an estimated 500 persons living with HIV/AIDS. The Southern New Hampshire HIV/AIDS Task Force, the only HIV/AIDS service provider in the area, is the designated Project Sponsor. The program will continue to provide emergency rental and utility assistance and supportive services, including barrier reduction, to a minimum of 391 persons living with HIV/AIDS over the three year period of the grant. Preference will be given to those who are homeless, in imminent danger of homelessness and/or those with dual or multiple diagnoses. For information contact: Harbor Homes, Inc., 12 Amherst Street, Nashau, NH, 03064. Peter Kelleher, Executive Director, Phone (603) 882–3616; Fax (603) 595–7414; E-mail *kelleher@harhomes.org.*

New Mexico

The Santa Fe Community Housing Trust will receive a HOPWA renewal grant for $1,286,000 to continue a Reentry Housing Strategies Program to assist persons living with HIV/AIDS (PLWAs) to transition back into a productive life. The program makes use of homeownership support for 14 households each year and recognizes that for some clients, the longevity and future life expectancy of PLWAs has changed significantly with the advent of new medical treatments. The purpose of the reentry program is to strategize a permanent solution to housing and income stabilization by assisting people to design their own reentry plan. It covers job training, educational prospects, and one-on-one counseling is provided to assist the clients to contact creditor and clean up credit issues. The reentry program makes homeownership possible and affordable through a mutual self help savings effort for downpayments and through leveraging community bank assistance for home purchases. The Trust issues loans or notes and has leveraging arrangements for over $8 million through area banks. Under the original grant, homeownership has been shown to be a significant incentive for clients in encouraging them to adhere to their difficult medical regimen, to pursue employment opportunities, and to transition into mainstream living. For information contact: Santa Fe Community Housing Trust, PO Box 713, Santa Fe, NM 87504–0713; Ms. Sharron L. Welsh, Executive Director; Phone: 505 989–3960; Fax: (505) 982–3690; E-mail: *sfcht505@aol.com.d*

New York

The Hudson Planning Group, Inc. will receive a HOPWA renewal grant for $451,700 to continue a resource identification program of shared financial management services for a New York City network of AIDS housing agencies and other service providers. The project, Management Services Organization (MSO), is presently serving two housing providers, Harlem United Community AIDS Center and Housing Works, Inc., through shared staff and technology that improves the infrastructure of nonprofit management. The use of MSO management tools, standard assessment, operating and reporting procedures, has resulted in more efficient use of management resources and higher levels of budgeting and planning advice in making use of financial data. The continuing project will include support for other non-profit, community based AIDS Services Organizations (ASOs), such as the Callen Lorde Community Health Center, the AIDS Day Services Association of New York (VidaCare subsidiary) and Hope Community, Inc., and is expected to reach nine providers over the next three years. This shared services model will also be tested for replication in other communities to promote similar management collaborations to establish, coordinate and develop housing assistance resources in those areas. In New York City, approximately 2,500 persons with HIV/AIDS will be served by the agencies participating in this project. For information contact: Hudson Planning Group, Inc., 180 Varick St., 16th Floor, New York, NY 10014; Mr. David Terrio, Managing Director; Phone: (212) 627–7900 x219; Fax: (212) 627–9247; E-mail: *Dterrio@BurchmanTerrio.com.*

Rhode Island

The Rhode Island Housing and Mortgage Finance Corporation (RIH), will continue its highly successful operations of a multi-faceted housing and supportive service program for persons living with HIV/AIDS (PLWAs) through a HOPWA renewal grant for $1,212,153. The grant sponsors, House of Compassion (HOC) located in northern RI, and AIDS Care Ocean State (ACOS) located in Providence will maintain a continuum of care for single adults and families affected by HIV/AIDS. The program provides supportive services, housing, and housing information services. Specific programs include the operation of two group homes, 12 scattered site apartments, and supportive services for all clients of both agencies. The past HOPWA grant has enabled the development of a seamless delivery of services ranging from housing referral to independent living and then supportive housing and related services. For information contact: Rhode Island Housing and Mortgage Finance Corporation; 44 Washington Street Providence, RI 02903. Ms. Susan Bodington, Director of Housing Policy; Phone: (401) 457–1286 Fax: (401) 457–1140 E-mail: *sbodington@rihousing.com.*

Washington

The Bailey-Boushay House project of the Virginia Mason Medical Center will receive a HOPWA renewal grant for $950,000 to sustain supportive services for people living with HIV/AIDS. Bailey-Boushay House is a nationally recognized care facility, which has provided intensive residential nursing health care and adult day care to more than 2,500 individuals since 1992. The goal of the project is to maintain and/or improve the behavioral stability of program participants and residents of the facility, enhancing their ability to obtain medical treatment and live independently in the community. The project will support mental health and substance abuse treatment for residents and program consumers, enhance clinical and management information systems, and assist the facility in developing capacity to conduct structured evaluations of the services. For information contact: Virginia Mason Medical Center, Bailey-Boushay House; 2720 East Madison Seattle, WA 98112; Ms. Leslie V. Ravensberg; Phone: (206) 720–3307 Fax: (206) 720–2299 E-mail: *leslie.von.ravensberg@vmmc.org.*

West Virginia

The State of West Virginia, Office of Economic Opportunity (OEO), will receive $1,085,928 of renewal funds for the continued operation of HOPWA assistance throughout the State. OEO is the supervising agent of a non-profit collaborative—the West Virginia Housing and Advocacy Coalition for People with AIDS, Inc. (Coalition), which consists of three partners: Covenant House, Inc. in Charleston; Caritas House, Inc. in Morgantown; and Community Networks, Inc. in Martinsburg. The Coalition is a statewide non-profit organization

created to establish a comprehensive and effective delivery of services to a homeless population with special needs associated with living with HIV/AIDS. The HOPWA program initiatives provide housing, supportive services, technical assistance, and resource identification to people living with HIV/AIDS and their family members. This project funding includes the continued operation of five (5) houses in which people with HIV/AIDS live, and the continuation of services to a growing number of over 350 persons infected with HIV and their affected family and household members. For information contact: West Virginia Office of Economic Opportunity; 950 Kanawha Blvd. E. 3rd Floor Charleston, WV 25301. Mr. Essa R. Howard Director; Phone: (304) 558–8860 Fax: (304) 558–4210 E-mail: *ehoward@oeo.state.wv.us.*

Wisconsin

The AIDS Resource Center of Wisconsin will receive a HOPWA renewal grant for $1,218,576 to continue providing intensive housing case management, rent assistance, and supportive services to persons living with HIV disease and who are also diagnosed with chronic drug abuse or mental illness issues and residing anywhere in the state of Wisconsin. In it's first two years of operations, ARCW's programs served 134 clients and reduced homelessness, increased adherence to medical, mental health and substance abuse treatment, reduced criminal behavior, and improved access to other HIV services. This support improved the client's quality of life, increased independence and reduced utilization of emergency medical care. The renewal funding will serve 195 people living with HIV/AIDS and allow for a 28 percent increase in the number of clients to be served. For more information: AIDS Resource Center of Wisconsin; P.O. Box 92487 Milwaukee, WI 53202. Mr. Doug Nelson, Executive Director; Phone: (414) 273–1991; Fax: 414–273–2357; e-mail: *doug.nelson@arcw.org.*

FY 2001 HOPWA New Projects by State

Iowa

The Iowa Finance Authority (IFA) is receiving $1,370,000 in HOPWA funding to create the AIDS Housing Network of Iowa. IFA has partnered with AIDS service organizations and housing agencies across the state, including to Siouxland Community Health Center, AIDS Project of Central Iowa, American Red Cross Grant Wood Area Chapter (Rapids AIDS Project), Family Service League, Iowa Center for AIDS Resources and Education, and John Lewis Coffee Shop. Under this grant, eighty-four of Iowa's counties, including those counties with the highest percentage of AIDS cases, will be served with housing and related supportive services. The AIDS Housing Network of Iowa will provide housing assistance to 237 persons living with HIV/AIDS and their families through 218 units of housing. Housing assistance will be provided through a 150 on-going tenant-based rental assistance units and 68 short-term emergency assistance subsidies. Additionally, 177 persons will receive related supportive services to ensure housing stability. Through the assistance of the Iowa Coalition for Housing and the Homeless, technical assistance will be provided to project sponsors and assistance will be given to the AIDS Housing Network in the development of a long-term housing strategy to evaluate needs for persons with HIV/AIDS across the State of Iowa.

For information contact: The AIDS Housing Network of Iowa, c/o Iowa Finance Authority, 100 East Grand Ave., Suite 250, Des Moines, IA, 50309. Donna Davis, Deputy Director, and Director of Housing Programs-IFA; Phone: (515) 242–4990; E-mail: donna.davis@ifa.state.ia.us.

Montana (and North Dakota and South Dakota)

The State of Montana Department of Public Health and Human Services in conjunction with the States of South Dakota and North Dakota will receive $1,309,501 for a three-year project to create the TRI-STATE HELP, Housing Environments for Living Positively (TS HELP). TS HELP is a continuum of housing and related supportive services opportunities for people living with HIV/AIDS and their families serving all three states, which do not qualify for HOPWA formula funding. TS HELP is a partnership between one State agency and four private agencies in North Dakota, South Dakota, and Montana. Overall grant administration will be undertaken by the Montana Department of Public Health and Human Services. The Sioux Empire Red Cross in South Dakota, Missoula AIDS Council in Montana, Yellowstone AIDS Project in Montana, Community Action Program, and Region VII in North Dakota will serve as sponsors. The Montana Department of Public Health and Human Services will conduct an independent evaluation of program outcomes and AIDS Housing of Washington, HOPWA Technical Assistance provider, will conduct a statewide HIV/AIDS housing needs assessment. TS HELP will assist persons living with HIV/AIDS by strengthening and expanding HIV/AIDS housing and related supportive services by providing 70 tenant-based rental assistance subsidies, 70 emergency assistance subsidies and housing coordination services to an estimated 232 individuals living with HIV/AIDS and their families. A variety of additional services and resources will be available to 175 persons living with HIV/AIDS and their families through HOPWA funding and leveraged resources.

For information contact: State of Montana, Department of Public Health and Human Services, 1400 Carter Drive, Helena, MT, 59620. Jim Nolan, Project Coordinator; Phone:(406) 447–4260; e-mail: *jnolan@state.mt.us.*

Oregon

The Health Division of the State of Oregon is awarded $1,370,000 of HOPWA funding to create the Oregon Housing Opportunities in Partnership (OHOP) program. OHOP will serve all 31 Oregon counties that are outside of the Portland metropolitan statistical area (MSA), which receives HOPWA formula funding. OHOP is a partnership between two State and four private agencies. The State of Oregon Health Division will serve as grantee and will work in partnership with the Oregon Housing and Community Services Department, the HIV Alliance, the Central Oregon Community Action Agency Network, On Track and the Mid-Willamette Valley Community Action Agency. The University of Oregon at Eugene will conduct an independent evaluation of program outcomes. Through leveraged funds, AIDS Housing of Washington, a nationally recognized HIV/AIDS technical assistance provider, and Development Solutions Group, a private consulting firm specializing in affordable housing, will provide assistance relating to needs assessment and program implementation. OHOP will provide tenant-based rental assistance and housing coordination services to an estimated 225 eligible clients. Through a variety of additional services and resources 120 persons living with HIV/AIDS and their families will benefit through increase housing stability.

For information contact: Oregon Department of Human Services, Health Division, 800 NE Oregon Street, #21, Portland, OR 97232–2162. Victor J. Fox, HIV Client Services Manager; Phone: (503) 731–4029; FAX: (503) 731–4608; e-mail: *victor.j.fox@state.or.us.*

HOPWA Technical Assistance Supplementary: Additionally, HUD awarded $2.5 million to three applicants

under the HOPWA Technical Assistance programs. The Purpose of the HOPWA Technical Assistance competition was to award grants that provide support from program operations. HUD established national goals for these funds: (1) Ensuring the sound management of HOPWA programs; and (2) targeting resources to underserved population.

FY 2001 Technical Assistance Awards by State

AIDS Housing of Washington

Under this award, AIDS Housing of Washington (AHW), based in Seattle, has been selected to receive $1,400,000 to continue the provision of National HOPWA Technical Assistance activities. AHW has provided assistance since 1995 and served as a pioneer in developing collaborations with housing and supportive services organizations for persons living with HIV/AIDS. AHW will continue its collaboration with Bailey House, Inc., (New York City), Abt Associates, the Corporation for Supportive Housing, and the AIDS Housing Corporation (Boston) and others to provide technical assistance to nonprofit organizations and State and local governments in planning, operating and evaluating housing assistance for persons who are living with HIV/AIDS and their families.

AHW will continue core assistance to help communities establish and enhance their comprehensive strategies for HIV/AIDS housing. In addition, the collaboration will promote the sound management and operation of HOPWA programs and coordinate evaluation activities that improve service delivery. In addition information services will help clients and communities better connect to available assistance and report on program accomplishments. This project adds a number of additional meetings and special initiatives to help assure that AHW and its partners meet the changing needs of HIV/AIDS housing providers and HOPWA grantees.

Through a new partnership with AIDS Alabama in Birmingham, AHW will launch a ''Southern Initiative'' that will bring all the skills, knowledge and resources of the National Technical Assistance Program to rural and urban southern parts of this country, with special emphasis on states comprising the lower Mississippi Delta. The desired outcome is to create permanent housing units dedicated to house persons living with HIV/AIDS and their families throughout the Southeast by networking with special needs housing agencies and support service delivery systems.

AHW also proposes to create eight to ten AIDS housing needs assessment plans, including four in the Southeastern States. The results of the needs assessment plans will help AHW in providing technical assistance on the full range of issues in AIDS housing planning, financing, development, operations, and program evaluation. Activities are being planned for a National HIV/AIDS Symposium in Summer 2002, a Fifth National HIV/AIDS Housing Conference in June 2003, and a National Meeting of HOPWA Formula Grantees in Fall 2003.

Outreach and education efforts will continue to be maintained and expanded on the World Wide Web site. AHW and its partners and subcontractors will research, and disseminate training resources and manuals on critical AIDS topics through the website database and existing curricula materials.

For information, contact: Donald Chamberlain, Director of Technical Assistance, AIDS Housing of Washington, 2014 East Madison Street, Suite 200,Seattle, Washington 98122, (206) 322–9444, (206) 322–9298 fax, e-mail: *donald@aidshousing.org, www.aidshousing.org*

Center for Urban Community Services, Inc.

The Center for Urban Community Services (CUCS), a non-profit organization based in New York City, received a National HOPWA Technical Assistance award of $400,000 to continue the provision of services throughout the country.

CUCS will continue the Housing Innovation Partnership to support sound management of AIDS housing programs. The partnership involves five sponsors: the Hudson Planning Group, a New York based provider that specializes in community based planning, knowledge of HUD programs and services, housing development for special needs populations, and financial management; the Corporation for Supportive Housing, a national intermediary organization with branch offices located in eight cities across the country has an array of skills in management operations of HUD programs, Lakefront SRO, a Chicago based operator of supportive SROs, with experience in supportive housing development, management with supportive services delivery; Barry University School of Social Work, located in Miami, which brings an understanding of the latest trends in academic theory and research; and Debbie Grieff Consulting, a Los Angeles based firm, brings substantial experience in supportive housing development and operations. Technical assistance training sessions recently were provided in the cities of New York, Chicago, Atlanta, Memphis, New Orleans and Raleigh-Durham under their FY1999 HOPWA technical assistance award.

Under this new grant, CUCS proposes to address these priority technical assistance needs: developing programs and services for people with multiple diagnosis; adapting programs to serve the changing needs of people living with the HIV; assisting providers in developing new housing services; strengthening the management of AIDS housing organizations and developing innovative solutions to maximize resources and ensure comprehensiveness. A series of Guidebooks will be produced on subjects related to HOPWA Program activities. Linkages with project sponsors throughout the country will be strengthened to coordinate on site delivery of technical assistance. Outreach and education opportunities will be increased with the operation of the CUCS ''800'' training /TA phone line which permits underserved populations and interested persons to raise housing issues as they occur and receive a one-on-one TA relationship. CUCS will continue to contact HUD field offices, persons living with HIV/AIDS, grantees, and project sponsors for insight in addressing housing and supportive services issues.

For information, contact: Suzanne Wagner, Director of Training and Technical Assistance, Center for Urban Community Services, 120 Wall Street, 25th Floor, New York, New York 10005, (800) 533–4449, (212) 801–3318, (212) 635–2191/fax, e-mail: *suzannew@cucs.org, www.cucs.org*

The Enterprise Foundation—Denver

Under this award for $100,000, the Denver Office of the Enterprise Foundation will support HOPWA projects in Colorado and other mountain States. Enterprise will make use of training and technical assistance materials, state-of-the art information technology, and hands-on assistance to transfer its expertise to community-based providers. In Denver, Enterprise will provide technical support to the City's Housing and Neighborhood Services Agency which manages HOPWA and Ryan White CARE Act funds in the Denver metropolitan area and collaborates with the City's HIV/AIDS Housing Advisory Committee. The support activities include training on:

- HOPWA program management, including development of effective

client tracking systems, training on performance reporting and financial management; and development of program management handbooks.

• Cultural competency, such as training for service providers to enable more responsive and effective work with diverse client populations.

• Improved service coordination, particularly in helping residents access needed services from other mental health, drug and alcohol rehabilitation, and physical health service providers.

• Employment support, such as advice in developing effective back-to work programs that enable residents to start and continue working while addressing the health care issues that interfere with their ability to work on a regular schedule, or in certain occupations.

Enterprise will also assess support needed by nonprofits to improve financial and program management systems, and to strengthen collaborations among housing and other service providers. The assistance will be provided by Enterprise-Denver staff and consultants who have experience in strategic planning, organizational development, housing development and management, program management and supportive services for HIV/AIDS populations. Enterprise-Denver will also be supported by its national office in drawing upon a wide range of existing Enterprise tools and experience in the development and operation of affordable housing programs and community-based development.

For information, contact: Karen Lado, Director, Denver Office, The Enterprise Foundation, 1801 Williams Street, Suite 200, Denver, CO 80218, (303) 376–5410. William Frey, Interim President, The Enterprise Foundation, 10227 Wincopin Circle, Suite 500, Columbia, MD 21044, (410) 772–2422.

Total for all 22 Renewal Grants	$21,544,025
Total for 3 New Project Grants	4,049,501
Total for 3 Technical Assistance Grants	1,900,000
Total	27,493,526

Dated: December 21, 2001.

Donna M. Abbenante,

General Deputy, Assistant Secretary for Community, Planning and Development.

[FR Doc. 01–32191 Filed 12–31–01; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Incidental Take Permit and Habitat Conservation Plan for Cyanotech Corporation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Cyanotech Corporation (Cyanotech) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service proposes to issue a 3-year permit to Cyanotech that would authorize take (harm, harassment, death or injury) of the endangered Hawaiian stilt, (*Himantopus mexicanus knudseni*) incidental to otherwise lawful activities. Such take would occur as a result of ongoing operation and maintenance of Cyanotech Corporation's acquaculture facility at Keahole Point on the island of Hawaii.

We request comments from the public on the permit application which includes a Habitat Conservation Plan (HCP) for the Hawaiian stilt. We also request comments on our preliminary determination that the Cyanotech HCP qualifies as a ''low-effect'' habitat conservation plan, eligible for a categorical exclusion under the National Environmental Policy Act.

DATES: Written comments should be received on or before February 1, 2002.

ADDRESSES: Comments should be addressed to Mr. Paul Henson, Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 50088, Honolulu, Hawaii 96850; facsimile (808) 541–3470.

FOR FURTHER INFORMATION CONTACT: Ms. Gina Shultz, Supervisory Fish and Wildlife Biologist, at the above address or telephone (808) 541–3441.

SUPPLEMENTARY INFORMATION:

Document Availability

Cyanotech's permit application and associated HCP, and the Service's Environmental Action Statement, are available for public review. The HCP describes the existing conditions at the Cyanotech aquaculture facility and the proposed measures that Cyanotech would undertake to minimize and mitigate take of the Hawaiian stilt. The Environmental Action Statement describes the basis for the Service's preliminary determination that the Cyanotech HCP qualifies as a low effect plan eligible for a categorical exclusion from further documentation under the National Environmental Policy Act.

You may obtain copies of the documents from review by contacting the office named above. You also may make an appointment to view the documents at the above address during normal business hours. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public.

Background

Section 9 of the Act and its implementing regulations prohibit the ''take'' of threatened or endangered species. Take is defined under the Act to include harass, harm, pursue, hunt shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in any such conduct (16 U.S.C. 1538). Harm includes significant habitat modification where it actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering 50 CFR 17.3(c). Under limited circumstances the Service may issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 50 CFR 17.22, respectively.

Cyanotech cultivates and harvests microalgae for commercial sale. The Cyanotech facility currently occupies approximately 90 acres of land and includes a series of man-made ponds or ''raceway ponds'' where the microalgae is grown; office and maintenance buildings; and laboratory, research, and processing buildings. The nutrient rich ponds support high-density invertebrate populations, a primary food source for the endangered Hawaiian stilt. Stilts are attracted to and nest within and adjacent to the aquaculture facility. Hawaiian stitl chicks that hatch at the facility are led by parents stilts to the ponds to feed where they are suspected either of drowning in the rapidly flowing waters or dying from adverse physiological reactions (e.g., acute dehydration) associated with ingestion of the hypersaline, high-alkaline conditions of the alga medium required for production. Cyanotech's aquaculture operation thus inadvertently attracts stilts to a man-made habitat that is unsuitable for successful stilt reproduction.

Under the HCP, Cyanotech would minimize incidental take of the Hawaiian stilt by implementing deterrence measures designed to eliminate stilt foraging and nesting at the Cyanoteck Facility. The following non-lethal deterrence measures would

be evaluated and may be implemented: (1) reduce or eliminate the invertebrate food source, (2) reconfigure raceway ponds to make them unattractive to the Hawaiian stilt, (3) net ponds to exclude Hawaiian stitl, (4) use biodegradable repellents, and (5) implement various hazing methods. Cyanotech will mitigate for incidental take of Hawaiian stilt eggs and chicks by creating suitable nesting habitat onsite. These measures would ensure (1) positive Hawaiian stilt reproductive success, (2) recruitment of fledged birds into the overall population, and (3) that the Cyanotech facility does not become a reproductive sink for stilts.

The Service's Proposed Action consists of the issuance of an incidental take permit and implementation of the HCP, which includes measures to minimize the incidental take of Hawaiian stilt eggs, chicks, subadults, and adults, and measures to mitigate any incidental take of Hawaiian stilts eggs and chicks at the Cyanotect facility. The four alternatives to the proposed alternative considered in the HCP are: (1) No Action, (2) Long-term Management Off Site, (3) Haze/Fee, and (4) Integrated Management Approach.

Under the No Action Alternative, no permit would be issued. Cyanotech would continue its microalgae operation without an HCP to address take of the Hawaiian stilt. Cyanotech did not select this option as it would be in violation of Section 9 of the Act.

Under the Long-term Management Off Site Alternative, Cyanotech would contribute funds to create, restore, or enhance habitat for Hawaiian stilt at an off site location. This alternative would provide mitigation for take of the Hawaiian stilt however, Cyanotech did not select this alternative due to the prepetutation of incidental take that would be caused by continued foraging and nesting of stilts at the Cyanotech facility.

Under the Haze/Fee Alternative, Cyanotech would haze Hawaiian stilts using non-lethal deterrents. This alternative may minimize take, however, Cyanotech did not select this alternative because hazing birds from a site has not proven effective as a long-term solution and would likely result in a long-term commitment of resources without reducing stilt numbers at the Cyanotech facility.

Under the Integrated Management Approach Alternative, Cyanotech would implement non-lethal bird deterrence, manage protected nesting habitat for 1 year only, and reallocate funds from on-site management to an off-site mitigation fund in years 2 and 3. Cyanotech did not select this alternative due to the unconditional closure of the on-site protected habitat after 1 year and the desire for flexibility provided by adaptive management.

The Service has made a preliminary determination that the Cyanotech HCP qualifies as a ''low-effect'' plan as defined by its Habitat Conservation Planning Handbook (November 1996). Our determination that a habitat conservation plan qualifies as a low-effect plan is based on the following three criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, or candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present and reasonable foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in our Environmental Action Statement, Cyanotech's HCP for the Hawaiian stilt qualifies as a ''low-effect'' plan for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Hawaiian stilt. The Service does anticipate significant direct or cumulative effects to the Hawaiian stilt from Cyanotech's microalgae operation.

2. Approval of the HCP would not have adverse effects on unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any cumulative or growth inducing impacts and, therefore would not result in significant adverse effects on public health or safety.

4. The HCP does not require compliance with Executive Order 11998 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or Fish and Wildlife Coordination Act, nor does it threaten or violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the HCP would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

We provide this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for the National Environmental Policy Act (40 CFR 1506.6). We will evaluate the permit application, HCP, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and National Policy Act regulations. If we determine that the requirements are met, we will issue a permit under section 10(a)(1)(B) of the Act to Cyanotech for take of Hawaiian stilt incidental to otherwise lawful activities in accordance with the HCP. We will fully consider all comments received during the comment period and will not make our final decision until after the end of the 30-day comment period.

Dated: December 18, 2001.

Rowan W. Gould,

Deputy Regional Director, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 01–32142 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–PB–24 1A; OMB Approval Number 1004–0005]

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On August 21, 2001, the BLM published a notice in the **Federal Register** (66 FR 43901) requesting comments on this proposed collection. The comment period ended on October 22, 2001. The BLM received no comments from the public in response to that notice. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0005), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity and methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Grazing Application-Grazing Schedule (43 CFR 4130).

OMB Approval Number: 1004–0005.

Bureau Form Number: 4130–1.

Abstract: The Bureau of Land Management uses the information to provide the opportunity for grazing operators to apply for changes to the grazing schedules in their BLM authorized grazing leases or permits.

Frequency: On occasion.

Description of Respondents: Holders of BLM-issued grazing leases and permits.

Estimated Completion Time: 20 minutes.

Annual Responses: 6,000.

Application Fee per Response: 0. There is no filing fee.

Annual Burden Hours: 2,000.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: December 11, 2001.

Michael H. Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01–32126 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–1430–ER–CACA–43368]

Proposed Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the San Diego Gas And Electric Company Valley-Rainbow 500 kV Interconnect Project, CA

AGENCY: Bureau of Land Management (BLM), and the California Public Utilities Commission (CPUC).

ACTION: Notice of Intent to prepare a joint EIS/EIR addressing the proposed Valley-Rainbow 500–kV Interconnect Project; an electrical transmission line project.

SUMMARY: In compliance with regulations at 40 CFR 1501.7 and 43 CFR 1610.2, notice is hereby given that the BLM, together with the CPUC, propose to direct the preparation of a joint EIS/EIR for the 500 kilovolt (kV) Valley-Rainbow Interconnect Project, proposed by the San Diego Gas and Electric Company (SDG&E). The BLM is the lead Federal agency for the preparation of this EIS/EIR in compliance with the requirements of the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulation for implementing NEPA (40 Code of Federal Regulations [CFR] 1500–1508), and the Department of the Interior's manual guidance on NEPA; and the CPUC is the lead State of California agency for the preparation of this EIS/EIR in compliance with the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 *et. seq.*), and implementing guidelines (California Code of Regulations [CCR] Title 14, Section 15000 *et. seq.*), and CPUC's Rules and Regulations to Implement CEQA. This notice initiates the public scoping for the EIS and also serves as an invitation for other cooperating agencies. Potential cooperating agencies include the U.S. Fish and Wildlife Service, the Department of Defense, the Bureau of Indian Affairs, the State Historic Preservation Officer, U.S. Corps of Engineers and the California Department of Fish and Game.

DATES: For scoping meeting and comments: One NEPA public scoping openhouse will be held during 2002 on the following date: January 8, 2002, from 3:00 pm to 8:00 pm, at the Comfort Inn, 27338 Jefferson Ave., Temecula, California.

Written comments must be postmarked no later than 30 days from the date of this notice in order to be included in the draft EIR/EIS. Please submit any comments to the address listed below.

ADDRESSES: Written comments should be addressed to Mr. James G. Kenna, Field Manager, Bureau of Land Management, Palm Springs-South Coast Field Office, 690 West Garnet Ave, P.O. Box 581260, North Palm Springs, California 92258–1260.

FOR FURTHER INFORMATION CONTACT: John Kalish, Bureau of Land Management, Palm Springs-South Coast Field Office, 690 West Garnet Ave, P.O. Box 581260, North Palm Springs, California 92258–1260, (760) 251–4849.

SUPPLEMENTARY INFORMATION: The Valley-Rainbow 500 kV Interconnect Project is proposed by SDG&E to provide an interconnection between SDG&E's existing 230 kV transmission system at the proposed Rainbow Substation, on Rainbow Heights Road near the unincorporated community of Rainbow in San Diego County, and the Southern California Edison's (SCE) existing 500 kV transmission system at the Valley Substation on Menifee Road in the unincorporated community of Romoland in Riverside County. The project area is located entirely in California within northern San Diego County and western Riverside County.

This project consists of the following new or expanded electric transmission and substation facilities. A single circuit 500 kV electric transmission line approximately 31 miles in length would connect a proposed new SDG&E 500 kV/230 kV bulk power transmission substation near the community of Rainbow, San Diego County to SCE's Valley substation near Romoland, Riverside County. The proposed 500 kV transmission line would be built on steel poles and lattice towers within a new right-of-way. To support this proposed 500 kV Interconnect system, a second 230 kV circuit would be added to the existing Talega to Escondido 230 kV transmission line on the U.S. Marine Corps Base, Camp Pendleton and private lands within San Diego County. This proposed second 230 kV circuit would be placed on existing steel supported structures. A 7.7 mile section of an existing 69kV transmission circuit, currently installed on one side of the Talega-Escondido 230 kV transmission line structures, would be rebuilt on new structures within the existing right-of-way between SDG&E's Pala and Lilac Substations, San Diego County. Voltage support upgrades to SDG&E's existing Mission, Miguel and Sycamore Canyon substations would also be needed.

The CPUC held public scoping meetings from July 10–12, 2001 in the communities of Temecula, Winchester and Pauma Valley and accepted comments from June 30 through August 7, 2001. The BLM actively participated in this State scoping process as the lead Federal agency. The State scoping process resulted in substantial comment that is broadly summarized as involving environmental issues and concerns, growth inducement, purpose and need for the project and alternatives. Possible impacts to quality of life, property values, visual and aesthetic qualities of the area, wine making and other agricultural operations, placement of schools and parks, community and residential development, recreation including hot air ballooning and human health were addressed by the public. In addition to these concerns, the BLM has identified issues related to wildlife,

including threatened and endangered species, cultural resources, and Native American concerns.

Interested members of the public are now invited to participate in a NEPA scoping process, and are requested to help identify new issues or concerns and alternatives to be considered related to this proposed Project. Comments previously submitted during the CPUC scoping process are part of the official record and need not be resubmitted during this NEPA process. Written comments must be submitted no later than 30-days from the date of this notice to ensure that your comments are included in the draft EIS/EIR. When available, the public will be provided a 60-day public review period on the EIS/EIR. These documents will be made available on the Internet at BLM's Web site: *www.ca.blm.gov* and the CPUC Web site: *www.cpuc.ca.gov/divisions/energy/Environmental/info/DUDEK/valleyrainbow.htm* and at local public libraries in the California communities of Chula Vista, Escondido, Fallbrook, San Clemente, Sun City and Temecula. Contact the BLM if you would like to be included in the mailing list to receive copies of all public notices relevant to this project. Local notice will be provided a minimum of 15 days prior to the scoping open house date.

Dated: November 30, 2001.

James G. Kenna,

Field Manager.

[FR Doc. 01–32124 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(WO–220–01–1020–JA–VEIS)

Notice of Extension of Public Comment Period and Schedule of Public Scoping Meetings for the Environmental Impact Statement for the Conservation and Restoration of Vegetation, Watershed, and Wildlife Habitat Treatments on Public Lands Administered by the Bureau of Land Management in the Western United States, Including Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of public comment period for scoping; and dates and locations for public scoping meetings.

SUMMARY: Pursuant to section 102 (2) (C) of the National Environmental Policy Act of 1969 (NEPA), the BLM will prepare a national, programmatic EIS and conduct public scoping meetings on (1) management opportunities and treatment methods for noxious weeds and other invasive species, and (2) the conservation and restoration of native vegetation, watersheds, and wildlife habitat. The EIS will cover the public lands administered by BLM in 16 western states, including Alaska. The period for initial scoping comments from the public has been extended to March 29, 2002.

DATES: Written or e-mailed comments for the initial scoping phase may be submitted through March 29, 2002. BLM will hold public scoping meetings to focus on relevant issues and environmental concerns, identify possible alternatives, and help determine the scope of the EIS.

Dates and locations for the scoping meetings are as follows:

Date and time	Locations	BLM contact
January 8, 5–8 p.m	Utah Dept. of Natural Resources Bldg. 1594 W. North Temple, Salt Lake City, UT.	Verlin Smith (801) 539–4055.
January 10, 3–6 p.m	Western Wyoming Community College, Room 1003, 2500 College Drive, Rock Springs, WY.	Lance Porter (307) 352–0252.
January 14, 6–9 p.m	Holiday Inn Express—Neptune Room, 1100 North California, Socorro, NM.	Margie Onstad (505) 838–1256.
January 16, 3–5 p.m. and 6–9 p.m	Holiday Inn Crown Plaza, 2532 W. Peoria Avenue, Phoenix, AZ.	Deborah Stevens (602) 417–9215.
January 22, 6–9 p.m	BLM Office Conference Room, 345 E. Riverside Drive, St. George, UT.	Kim Leany (435) 688–3208.
January 24, 2–5 p.m. and 6–9 p.m	Grand Vista Hotel, 2790 Crossroads Blvd, Grand Junction, CO.	Harley Metz (970) 244–3076.
January 29, 4–7 p.m	Miles Community College—Room 106, 2715 Dickinson, Miles City, MT.	Jody Weil (406) 896–5258.
January 31, 4–7 p.m	Elks Lodge 604 Coburn Avenue, Worland, WY	Janine Terry (307) 347–5194.
February 5, 5–8 p.m	Sacred Heart Parish Hall, 507 East 4th Street, Alturas, CA.	Jennifer Purvine (530) 233–7932.
February 11, 5–8 p.m	U.S. Forest Service, Helena National Forest Headquarters, 2880 Skyway Drive, Helena, MT (across from airport).	Jody Weil (406) 896–5258.
February 13, 6–9 p.m	Vista Inn, 2645 Airport Way Boise, ID	Barry Rose (208) 373–4014.
February 14, 6–9 p.m	College of Southern Idaho, 315 Falls Ave, Shields Bldg, Room 117, Twin Falls, ID.	Eddie Guerrero (208) 736–2355.
February 19, 4–7 p.m	BLM-Nevada State Office, 1340 Financial Blvd., Reno, NV.	JoLynn Worley (775) 861–6515.
February 21, 2–5 p.m. and 6–9 p.m	Hilton Garden Inn, 3650 East Idaho Street, Elko, NV	Mike Brown (775) 753–0200.
February 26, 5–8 p.m	Holiday Inn Select, 801 Truxton Ave,Bakersfield, CA	Stephen Larson (661) 391–6099.
February 28, 6–9 p.m	Valley Library, 12004 East Main, Spokane, WA	Kathy Helm (509) 536–1252.
March 4, 6–9 p.m	Days Inn City Center, 1414 SW 6thPortland, OR	Chris Strebig (503) 952–6003.
March 6, 3–6 p.m	Anchorage Field Office—BLM, 6881 Abbott Loop Road, Anchorage, AK.	Gene Terland (907) 271–3344.
March 12, 9 a.m.–12 noon	Washington Plaza Hotel, Franklin Room, 10 Thomas Circle (Massachusetts and 14th Street), Washington, D.C..	Sharon Wilson (202) 452–5130.

ADDRESSES: For further information, to provide written comments, or to be placed on the mailing list, contact Brian Amme, Acting Project Manager, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520–0006; E-mail *brian__amme@nv.blm.gov;* telephone (775) 861–6645. Comments will be available for public inspection at the BLM Nevada State Office, 1340 Financial Blvd.; Reno, Nevada 89502.

Individual respondents may request confidentiality. If you wish your name and/or address withheld from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written or e-mailed comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: This national, programmatic EIS will provide a comprehensive cumulative analysis of BLM conservation and restoration treatments involving vegetation communities, watersheds and wildlife habitats.

- It will also consider state-specific, reasonably foreseeable activities, including hazardous fuels reduction treatments.
- It will address human health risk assessments for proposed use of new chemicals on public lands.
- Restoration activities may include but are not limited to prescribed fire, riparian restoration, native plant community restoration, invasive plants and noxious weeds treatments, understory thinning, forest health treatments, or other activities related to restoring fire-adapted ecosystems.

The EIS is not a land-use plan or a land-use plan amendment. It will provide a comprehensive programmatic NEPA document to allow effective tiering and serve as a baseline cumulative impact assessment for other new, revised or existing land use and activity level plans that involve vegetation, wildlife habitat and watershed treatment, modification or maintenance.

- This EIS will consolidate four existing BLM vegetation treatment EISs developed in compliance with the NEPA between 1986 and 1992 into one programmatic document for the western United States, including Alaska. The EIS will update information and change to reflect new information and changed conditions on public lands since that time.
- An updated EIS is necessary for BLM to analyze proposed treatments of 4 to 5 million acres of prescribed and managed natural fire, Integrated Weed Management, hazardous fuels reduction, Emergency Stabilization and Restoration, and landscape-level restoration initiatives such as Great Basin Restoration Initiative. Current average annual acres of treatment selected in the existing BLM records of decision (RODS) equate to about 350,000 acres.
- The analysis area includes only surface estate public lands administered by 11 BLM state offices: Alaska, Arizona, California, Eastern States, Idaho, Montana (Dakotas), New Mexico (Oklahoma/Texas/Nebraska), Nevada, Oregon (Washington), Utah and Wyoming.

The BLM has initially identified the following issues for analysis in this programmatic EIS: hazardous fuels reduction and treatment including mechanical treatments, wildlife habitat improvement, restoration of ecosystem processes; protection of cultural resources, watershed and vegetative community health, new listings of threatened and endangered species and consideration of other sensitive and special status species, new chemical formulations for herbicides deemed to be more environmentally favorable, smoke management and air quality, emergency stabilization and restoration, and watershed and water quality improvement.

Dated: December 10, 2001.

Henri Bisson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 01–32232 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–1020–PG]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Butte, Dillon, and Missoula Field Offices, Interior.

ACTION: Notice of meeting.

SUMMARY: The Western Montana Resource Advisory Council will have a meeting on January 15, 2002, at the BLM—Butte Field Office Conference Room, 106 North Parkmont, Butte, Montana starting at 9 a.m. Primary agenda topics include orientation for new members and the Dillon Resource Management Plan.

The meeting is open to the public and the public comment period is set for 11:30 a.m. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Hotaling, Butte Field Office Manager and Designated Federal Official, (406) 533–7600.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: November 21, 2001.

Scott Powers,

Dillon Field Manager.

[FR Doc. 01–32128 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–00–1020–24]

Mojave Southern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Mojave Southern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Mojave Southern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion will include manager's reports of field office activities; an update on the Southern Nevada Public Land Management Act of 1998; and other topics the council may raise.

All meetings are open to the public. The public may present written and/or

oral comments to the council at 2:30 p.m. on Thursday, January 17, 2002. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations should contact Phillip Guerrero at (702) 647–5046 by January 11, 2002.

DATES & TIME: The RAC will meet on Thursday, January 17 and Friday January 18, 2002 at the Red Rock Canyon National Conservation Area Visitors Center Friends Room from 8:30 a.m. to 4 p.m. daily.

FOR FURTHER INFORMATION CONTACT: Phillip L. Guerrero, Public Affairs Officer, BLM Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, NV 89108, or by phone at (702) 498–6088.

Dated: December 5, 2001.

Phillip L. Guerrero,

Public Affairs Officer, Las Vegas Field Office.

[FR Doc. 01–32129 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1410–PG]

Notice of Meeting

December 6, 2001.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Alaska Resource Advisory Council meeting.

SUMMARY: The BLM Alaska Resource Advisory Council will conduct an open meeting Thursday, January 31, 2002, from 9:30 a.m. until 4 p.m. and Friday, February 1, 2002, from 8:30 a.m. until noon. The meeting will be held at the Campbell Creek Science Center, 6881 Abbott Loop Road, Anchorage.

Primary agenda items for the meeting include land use planning starts in Alaska and scoping for the northwest National Petroleum Reserve—Alaska and Colville River multiple use activity plans. The council will hear public comments Thursday, January 31, from 1–2 p.m. Written comments may be mailed to BLM at the address below.

ADDRESSES: Inquiries or comments should be sent to BLM External Affairs, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, 907–271–3322, or via E-mail to *teresa__mcpherson@ak.blm.gov.*

Linda S.C. Rundell,

Associate State Director.

[FR Doc. 01–32130 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1020–PG]

Notice of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Upper Snake River District Resource Advisory Council Meeting: Location andTimes.

SUMMARY: The next Upper Snake River District Resource Advisory Council (RAC) Meeting will be held on February 27, 2002, beginning at 1 p.m., and February 28, 2002, beginning at 8 a.m. The meeting will be held at the Best Western Burley Inn, 800 N Overland Avenue in Burley, Idaho.

SUPPLEMENTARY INFORMATION: The RAC meets in accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA),5 U.S.C. The Upper Snake River District RAC will discuss scoping topics for the upcomingFire Management Direction Plan Amendments (FMDPA). The FMDPA will amend 12 land use plans in the district for hazardous fuels management. The RAC will also discuss the results of scoping for the Craters of the Moon National Monument ExpansionGeneral/Resource Management Plans. All meetings are open to the public. Each formal council meeting has time allocated for hearing public comments, and the public may present written or oral comments. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact the address below.

FOR FURTHER INFORMATION: David Howell at the Upper Snake River District Office, 1405 Hollipark Dr., Idaho Falls, ID 83401, or telephone (208) 524–7559.

Dated: December 6, 2001.

James E. May,

District Manager.

[FR Doc. 01–32131 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–200–1020–00]

Science Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Land Management (BLM) announces a public meeting of the Science Advisory Board to discuss DOI science goals, update recent BLM science initiatives, receive a briefing on the President's Energy Plan, and to discuss science and management of the National Landscape Conservation System units.

DATES: BLM will hold the public meeting on Friday, February 8, 2002, from 9 a.m. to 5 p.m. local time.

ADDRESSES: BLM will hold the public meeting at the Four Points Sheraton, Cottonwood Room, 10220 North Metro Parkway, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Lee Barkow, Bureau of Land Management, Denver Federal Center, Building 50, PO Box 25047, Denver, CO 80225–0047, 303–236–6454.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463).

I. The Agenda for the Public Meeting Is as Follows

9 a.m. Introduction and Opening Remarks
9:30 a.m. DOI Science Goals
10:30 a.m. Update on Recent BLM Science Initiatives
1 p.m. Briefing on the President's Energy Plan
2:45 p.m. The National Landscape Conservation System—A Discussion on Science and Management of the Units
4 p.m. Open Discussion by the Board and Drafting of Recommendations to the Director

II. Public Comment Procedures

Participation in the public meeting is not a prerequisite for submittal of written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on BLM's use of science are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, commenters should submit two copies of their written comments, where practicable. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom on Information Act (FOIA)

for a copy of your comments, we intend to make them available in their entirety, including your name and address (or your e-mail address if you file electronically). However, if you do not want us to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. We will honor your wish to the extent allowed by the law. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or business will be in their entirety, including names and addresses (or e-mail addresses).

Electronic Access and Filing Address: Commenters may transmit comments electronically via the Internet to: lee_barkow@blm.gov. Please include the identifier ''Science4'' in the subject of your message and your name and address in the body of your message.

III. Accessibility

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the hearing, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listedunder **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled hearing date. Although BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Lee Barkow,

National Science and Technology Center.

[FR Doc. 01–32125 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 31896]

Notice of Proposed Withdrawal; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service proposes to withdraw 20 acres of National Forest System land to protect the Federal investment in the Rocky Mountain Research Station. This notice segregates the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may by law be made of National Forest System land.

DATES: Comments should be received on or before April 2, 2002.

ADDRESSES: Comments should be sent to the Forest Supervisor, Coconino National Forest, 2323 E. Greenlaw Lane, Flagstaff, Arizona 86004.

FOR FURTHER INFORMATION CONTACT: Pete Mourtsen, Coconino National Forest, 928–527–3414.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Coconino National Forest,

Gila and Salt River Meridian,

T. 21 N., R. 7 E.,
sec. 27, S½NW¼NW¼.

The area described contains 20 acres in Coconino County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor of the Coconino National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request, by the date specified above, to the Forest Supervisor, Coconino National Forest. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: December 2, 2001.

Steve J. Gobat,

Acting Deputy State Director, Resources Division.

[FR Doc. 01–32127 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–741–743 (Review)]

Melamine Institutional Dinnerware From China, Indonesia, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on melamine institutional dinnerware from China, Indonesia, and Taiwan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on melamine institutional dinnerware from China, Indonesia, and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is February 21, 2002. Comments on the adequacy of responses may be filed with the Commission by March 18, 2002. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://*

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 02–5–067, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

www.usitc.gov). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

On February 25, 1997, the Department of Commerce issued antidumping duty orders on imports of melamine institutional dinnerware from China, Indonesia, and Taiwan (62 FR 8426). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China, Indonesia, and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as melamine institutional dinnerware.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as producers of melamine institutional dinnerware.

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the Order Date is February 25, 1997.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR § 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 21, 2002. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is March 18, 2002. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation

of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in each Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1996.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 20001 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s'') operations on that product during calendar year 2001 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each Subject Country accounted for by your firm's(s'') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from each Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s'') operations on that product during calendar year 2001 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each Subject Country accounted for by your firm's(s'') production; and

(b) the quantity and value of your firm's(s'') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each Subject Country accounted for by your firm's(s'') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in each Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in each Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published

pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 20, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–32246 Filed 12–31–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CER part 50.7, notice is hereby given that on November 7, 2001, a proposed Consent Decree in *United States* v. *Aristech Chemical Corporation,* Civil Action No. C–1–01–772, was lodged with the United States District Court for the Southern District of Ohio, Western Division.

In this action the United States seeks civil penalties and injunctive relief against Aristech Chemical Corporation (''Aristech'') pursuant to section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b) (1983), *amended by,* 42 U.S.C. 7413(b) (Supp. 1991), for alleged violations at Aristech's Ironton, Ohio facility. Under the settlement, Aristech will pay a civil penalty of $450,000, and apply for and obtain a permit for the Phenol Expansion Project, under the CAA's Prevention of Significant Deterioration (''PSD'') program, from the State of Ohio, the permitting authority.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Aristech Chemical Corporation,* D.J. Ref. 90–5–2–1–06701/1.

The Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Ohio, Western Division, Potter Stuart Federal Courthouse, 5th and Walnut Streets, Room 220, Cincinnati, Ohio 45202, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $7.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources, Division.

[FR Doc. 01–32223 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on December 20, 2001, a proposed Complaint and Consent Decree in *United States* v. *Conoco Inc.,* Civil Action No. H–01–4430, was lodged with the United States District Court for the Southern District of Texas.

In this action the United States sought civil penalties and injunctive relief against Conoco Inc. (''Conoco'') pursuant to Section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b) (1983), *amended by,* 42 U.S.C. 7413(b) (Supp. 1991), alleged violations at Conoco's 4 refineries in Colorado, Montana, Oklahoma and Louisiana. Under the settlement, Conoco will implement innovative pollution control technologies to greatly reduce emissions of nitrogen oxides (''No_X'') and sulfur dioxide (''SO2'') from refinery process units and adopt facility-wide enhanced monitoring and fugitive emission control programs. In addition, Conoco will pay a civil penalty of $1.5 million and spend $5.5 million on supplemental and beneficial environmental projects. The states of Colorado, Montana, Oklahoma and Louisiana will join in this settlement as a signatories to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Conoco Inc.,* D.J. Ref. 90–5–2–1–07295/1.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Texas, U.S. Courthouse, 515 Rusk, Houston, Texas 77002, and at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $36.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32222 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on December 20, 2001 a proposed Consent Decree (''Decree'') in *United States* v. *Conoco, Inc.* Civil Action No. 01–2478, was lodged with the United States District Court for the District of Colorado.

The proposed consent resolves claims for civil penalties and permanent injunctive relief for violation of the National Emission Standards for Hazardous Air Pollutants (''NESHAP'') requirements of section 112 of the CAA, 42 U.S.C. 7412, and the implementing regulations pertaining to petroleum refineries found at 40 CFR part 63, subpart CC, at Conoco's petroleum refinery located at 5801 Brighton Blvd. in Commerce City, Co.

Under the terms of the decree Conoco will pay a civil penalty of $38,775.20, and comply with all performance test and reporting requirements applicable to the flares. Conoco will also complete two supplemental environmental projects, at a cost of no less than $130,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, Suite 945NT, Denver, Co 80202, and should refer to *United States* v. *Conoco, Inc.,* D.J. Ref. 90–5–2–1–07295.

The Decree may be examined at the offices of the EPA Library, EPA Region VIII, located at 999 18th Street, First Floor, Denver, Colorado 80202. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy of the Decree, please enclose a check payable to the Consent Decree Library for $8.50 for a complete

copy of the decree (25 cents per page, reproduction cost).

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32224 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Loding of Consent Decree

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Honeywell International Inc.* (E.D. Va.), Civil Action No. 3:01CV789 was lodged on November 23, 2001 with the United States District Court for the Eastern District of Virginia. The Consent Decree resolves the United States' claims against defendant, Honeywell International Inc., with respect to violations of the Clean Air Act, the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), the Emergency Planning and Community Right-to-Know Act (''EPCRA''), and the Resource Conservation and Recovery Act (''RCRA'') at its chemical manufacturing facility in Hopewell, Virginia.

Under the Consent Decree, defendant will pay the United States $110,000 in penalties. In addition, the defendant will implement five Supplemental Environmental Projects, or ''SEPs,'' at an estimated cost of $772,000. These SEPs include (1) within ten months of entry of the Consent Decree and at a cost of no less than $375,000, the conversion of a refrigeration unit from use of chlorfluorocarbon-based refrigerant to hydrofluorocarbon-based refrigerant; (2) within seventeen months of entry of the Consent Decree and at a cost of no less than $300,000, the installation of an air emissions control system to reduce the release of ammonia; (3) within forty-five (45) days of entry of the Consent Decree and at a cost of no less than $35,000, the purchase of a ''reverse 911'' interactive notification system for the Hopewell Local Emergency Planning Committee; (4) within forty-five (45) days of entry of the Consent Decree and at a cost of no less than $20,000, the purchase of a skirted boom and trailer and associated training services for the Henrico Regional Hazardous Incident Team; and (5) within forty-five (45) days of entry of the Consent Decree and at a cost of no less than $42,000, the purchase of mass decontamination equipment and associated training for emergency response teams at two local medical centers, the John Randolph Medical Center in Hopewell, VA and the Southside Regional Medical Center in Petersburg, VA.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Honeywell International, Inc.,* DOJ reference number 90–7–1–06900.

The proposed Consent Honeywell may be examined at the Office of the United States Attorney, 600 East Main Street, Suite 1800, Richmond, Virginia; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania. A copy of the proposed decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $13.00 ($.25 per page for production costs), payable to the Consent Decree Library.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32219 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Clean Air Act

Notice is hereby given that a consent decree in *United States* v. *Kenneth McDonald and Nicholas Menegatos*, C.A. No. 3:CV–01–0510, was lodged on September 11, 2001, with the United States District Court for the Middle District of Pennsylvania. This notice was previously published in the **Federal Register** on October 4, 2001 and the public was given 30 days to comment. No comments were received. However, because of severe disruption in the mail service, the United States is unable to conclude with certainty that any comments mailed in response to that notice would have been received. As a result, the United States is providing this opportunity for any prior persons who previously submitted comments to resubmit their comments as directed below.

The consent decree resolves the United States' claims against Defendant Nicholas Menegatos for violations of the Clean Air Act, 42 U.S.C. 7401–7671q, and the National Emission Standards for Hazardous Air Pollutants for asbestos (''asbestos NESHAP''), 40 CFR part 61, with respect to the partial demolition of a facility, located in Tannersville, Pennsylvania.

Under the consent decree, Defendant Menegatos, based upon his ability-to-pay, has agreed to pay a civil penalty in the amount of $2700 and has agreed to take a training course that will familiarize him with the Clean Air Act and the asbestos NESHAP regulations.

The Department of Justice will receive, for a period of twenty (20) days from the date of this publication, comments relating to the proposed consent decree. Comments previously submitted by mail should be resubmitted to the Acting Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Kenneth McDonald and Nicholas Menegatos*, C.A. No. 3:CV–01–0510, DOJ Reference No. 90–5–2–1–2217. The comments should be faxed to the Acting Assistant Attorney General at 202/616–6583.

The proposed consent decree may be examined at the Office of the United States Attorney, 228 Walnut Street, Harrisburg, Pennsylvania 17108; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.75 (.25 cents per page production costs), payable to the Consent Decree Library.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32218 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with 28 CFR 50.7, the Department of Justice gives notice that a proposed consent decree in *United States* v. *Mobil Oil Corporation,* No. CV–96–1432 (E.D.N.Y), was lodged with the United States District Court for the Eastern District of New York on December 13, 2001, pertaining to the

payment of a civil penalty, compliance and other injunctive relief, and implementation of a supplemental environmental project in connection with the Mobil Oil Corporation's (''Mobil'') violations of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.,* at the Port Mobil facility in Staten Island, New York City, New York.

Under the proposed consent decree, Mobil will pay a civil penalty of $8.2 million, will agree to comply with RCRA at the Port Mobil facility and implement corrective action as directed by the U.S. Environmental Protection Agency, will agree to refrain from making certain legal arguments under specified circumstances, and will agree to implement a supplemental environmental project—purchasing land for preservation in the Staten Island or New York city harbor area—at a cost of at least $3 million. The Consent Decree includes a release of claims alleged in the complaint.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comment should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Mobil Oil Corporation,* No. CV–96–1432 (E.D.N.Y.), and DOJ Reference No. 90–7–1–794. Commenters may request an opportunity for a public meeting in the affected area, in accordance with RCRA Section 7003(d), 42 U.S.C. 6973(d).

The proposed consent decree may be examined at: (1) the Office of the United States Attorney for the Eastern District of New York, One Pierrepoint Plaza, Brooklyn, New York 11201, (718) 254–7000; and (2) the United States Environmental Protection Agency (Region 2), 290 Broadway, New York 10007 (contact Stuart Keith in the office of Regional Counsel). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $6.00 (24 pages at 25 cents per page reproduction costs), may payable to the Consent Decree Library.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32221 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

Notice is hereby given that a proposed Consent Decree *United States, et al.* v. *Montrose Chemical Corporation of California, et al.,* No. CV 90–3122–R (C.D. Cal), was lodged on December 21, 2001 with the United States District Court for the Central District of California.

The consent decree resolves claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended, brought against defendants Montrose Chemical Corporation of California (''Montrose''), Aventis CropScience USA, Inc., Chris-Craft Industries, Inc. (now News Publishing Australia Ltd., by merger), and Atkemix Thirty-Seven, Inc. (now Stauffer Management Company, LLC, by merger) (collectively, the ''DDT Defendants''), for response costs incurred and to be incurred by the United States Environmental Protection Agency in connection with responding to the release and threatened release of hazardous substances at the ''Current Storm Water Pathway.'' The Current Storm Water Pathway consists of the following system of man-made storm water conveyances: the Kenwood Drain, the Torrance Lateral, the Dominguez Channel (from Laguna Dominguez, the most northern point of tidal influence in the Dominguez Channel, to the Consolidated Slip), and the portion of the Los Angeles Harbor known as the Consolidated Slip from the mouth of the Dominguez Channel south to but not extending beyond Pier 200B and 200Y.

The proposed consent decree requires the DDT Defendants to pay $1.4 million to the United States Environmental Protection Agency, $50,000 to the California Department of Toxic Substances Control, and $450,000 to the California Regional Water Quality Control Board, Los Angeles Region, which commits to spend this money on the Current Storm Water Pathway only. The consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044; and refer to *United States, et al.* v. *Montrose Chemical Corporation of California, et al.,* No. CV 90–3122–R (C.D. Cal), and DOJ Ref. #90–11–3–511/3.

The proposed settlement agreement may be examined at the Office of the United States Attorney, Central District of California, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012; and the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32220 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on December 20, 2001, a Consent Decree in *United States, et al.* v. *Navajo Refining, Co., et al.,* Civil Action No. Civ–01–1422 LH/LCS, was lodged with the United States District Court for the District of New Mexico.

In a complaint that was filed simultaneously with the Consent Decree, the United States sought injunctive relief and penalties against Navajo Refining Company ('Navajo'') and Montana Refining Company ('Montana Refining''), pursuant to

section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b) (1983), *amended by,* 42 U.S.C. 7413(b) (Supp. 1991) for alleged CAA violations at Navajo's two refineries in Artesia and Lovington, New Mexico, and at Montana Refining's refinery in Great Falls, Montana.

Under the settlement, Navajo and Montana Refining will implement innovative pollution control technologies to greatly reduce emissions of nitrogen oxides (''NO_X'') and sulfur dioxide (''SO_2'') from refinery process units and they will adopt facility-wide enhanced monitoring and fugitive emission control programs. In addition, Navajo and Montana Refining will pay a civil penalty of $400,000 for settlement of the claims in the United States' complaint, and Navajo will pay $350,000 for settlement of claims raised by the State of New Mexico in two compliance orders that New Mexico issued to Navajo in May and July of 2001. Navajo also will perform environmentally beneficial projects totaling approximately $1.4 million. The States of New Mexico and Montana will join in this settlement as signatories to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.,* v. *Navajo Refining Co., et al.* D.J. Ref. 90–5–2–1–2228/1.

The Consent Decree may be examined at the Office of the United States Attorney, 201 3rd St., NW., Suite 900, Albuquerque, New Mexico, 87102, and at U.S. EPA Region 6, Fountain Place, 1445 Ross Avenue, Dallas, TX 75202. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $53.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32216 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a consent decree in *United States* v. *Sequa Corporation and John H. Thompson*, C.A. No. 01–CV–4784 (E.D.Pa.), was lodged on September 20, 2001, with the United States District Court for the Eastern District of Pennsylvania. This notice was previously published in the **Federal Register** on October 15, 2001 and the public was given 30 days to comment. No comments were received. However, because of severe disruption in the mail service, the United States is unable to conclude with certainty that any comments mailed in response to that notice would have been received. As a result, the United States is providing this opportunity for any persons who previously submitted comments to resubmit their comments as directed below.

The consent decree resolves the United States' claims against defendants Sequa Corporation (''Sequa'') and John H. Thompson (''Thompson'') with respect to past response costs incurred through September 30, 1999, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 41 U.S.C. 9607. The costs were incurred in connection with the Dublin TCE Site, located in the Borough of Dublin, Bucks County, Pennsylvania. Defendant Thompson owns the Site property, or a portion thereof, and defendant Sequa conducted manufacturing activities at the Site, which became contaminated with trichloroethylene.

Under the consent decree, defendants will pay the United States $3,200,000 in reimbursement of past response costs incurred in connection with the Site. Said amount will be paid within thirty (30) days after entry of the consent decree by the Court.

The Department of Justice will receive, for a period of twenty (20) days from the date of this publication, comments relating to the proposed consent decree. Any persons who previously submitted comments should resubmit and address their comments to the Acting Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sequa Corporation and John H. Thompson*, DOJ Reference No. 90–11–2–780. The comments should be faxed to the Acting Assistant Attorney General at 202/616–6583. Alternatively, the comments may be mailed to the Office of the United States Attorney, ATTN: Barbara Rowland, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania 19106.

The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania 19106; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania. A copy of the proposed decree may be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.75 (.25 cents per page production costs), payable to the Consent Decree Library.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32217 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,039]

Fashion International A.D.M. Services, Inc. Scranton, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 7, 2001, applicable to workers of Fashion International located in Scranton, Pennsylvania. The notice was published in the **Federal Register** on June 27, 2001 (66 FR 34256).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Company information shows that worker separations occurred at A.D.M. Services, Inc. when it closed in March, 2001. A.D.M. Services provided designing services and markers supporting the production of men's sport coats and men's and ladies' blazers at Fashion International, Scranton, Pennsylvania which also closed in March, 2001. A.D.M. Services, Inc. workers were inadvertently omitted from the certification.

The intent of the Department's certification is to include all workers of Fashion International who were adversely affected by increased imports of men's sport coats and men's and ladies' blazers.

Accordingly, the Department is amending the certification to cover the workers of A.D.M. Services, Inc., Scranton, Pennsylvania.

The amended notice applicable to TA–W–39,039 is hereby issued as follows:

''All workers of Fashion International and A.D.M. Services, Inc., Scranton, Pennsylvania who became totally or partially separated from employment on or after February 24, 2001, through June 7, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 13th day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32209 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 14, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 14, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 10th day of December, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 12/10/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,396	Lady Ester Lingerie (Co.)	Berwick, PA	10/24/2001	Lingerie, Sleepwear.
40,397	Lorber Industries (Co.)	Snyder, TX	10/22/2001	Cotton Yarn.
40,398	R.G. Barry Texas LP (Co.)	San Angelo, TX	11/20/2001	Soles for Slippers.
40,399	Hermes Floral (Wrks)	Becker, MN	10/17/2001	Cut Flowers.
40,400	Meridian Automotive (UAW)	Centralia, IL	10/18/2001	Fiberglass Auto Parts.
40,401	ASARCO, Inc. TN Mines Div (Wrks)	Strawberry Plns, TN	11/20/2001	Zinc Concentrate.
40,402	Prime Tanning Corp (UFCW)	St. Joseph, MO	10/24/2001	Wet Blue Leather.
40,403	Gen Corp (GDX) (USWA)	Marion, IN	11/28/2001	Vehicle Sealing.
40,404	Fender Musical Instrument (Co.)	Westerly, RI	10/19/2001	Guitars.
40,405	Xerox Corp. (UNITE)	Canandaigua, NY	11/27/2001	Ink Jet Printhead Cartridges.
40,406	VF Jeanswear (Co.)	Oneonta, AL	11/27/2001	Ladies' Jeans.
40,407	TRW Automotive Braking (USWA)	Milford, MI	11/27/2001	Automotive Braking Systems.
40,408	Carrier Corp (Wrks)	Conway, AR	10/19/2001	Commercial Refrigeration Products.
40,409	Bogner of America, Inc. (Co.)	Newport, VT	11/21/2001	Men's and Ladies' Ski Parkas.
40,410	Thyssen Mining (Wrks)	Nye, MT	11/27/2001	Platinum and Paladium.
40,411	Bowen Machine (Co.)	El Paso, TX	11/19/2001	Construction Labor and Equipment.
40,412	Alcatel USA (Co.)	Andover, MA	11/28/2001	Network Switch (7420 Router).
40,413	Mikes, Inc. (Co.)	South Roxana, IL	11/13/2001	Rods for Diesel Engines.
40,414	Catawissa Lumber (Co.)	West Jefferson, NC	11/28/2001	Hardwood Furniture.
40,415	Pressman Gutman Co., Inc (Co.)	New York, NY	10/25/2001	Textile Piece Goods
40,416	Schaffstall Manufacturing (Wrks)	North Collins, NY	10/24/2001	Components For Xerox Copy Machines.
40,417	NTN Bower Corp (Wrks)	Hamilton, AL	10/18/2001	Tapered Roller Bearings.
40,418	Wood and Hyde Leather (Wrks)	Gloversville, NY	10/17/2001	Finished Leather.
40,419	Flextronics International (Wrks)	Portsmouth, NH	10/09/2001	Electronic Circuit Boards.
40,420	International Wire Group (Co.)	Pine Bluff, AR	10/02/2001	Shielding Wire.
40,421	Exide Technologies (UAW)	Shreveport, LA	11/27/2001	Batteries—Automobile.
40,422	Crown Marking Equipment (Co.)	Warrington, PA	10/24/2001	Plastic Self Inking Rubber Stamp.
40,423	Wells Lamont Industry (Co.)	Warsaw, IN	10/24/2001	Terry Cloth Gloves.
40,424	Georgia Pacific (Wrks)	Superior, WI	12/03/2001	Superior Hardboard.
40,425	Tenneco Automative (Co.)	Ligonier, IN	11/26/2001	Exhaust Systems.
40,426	Gilbert Western Co. (Wrks)	Nye, MT	11/28/2001	Construction Workers.
40,427	National Ring Traveler Co (Wrks)	Pawtucket, RI	11/21/2001	Jewelry Chains.
40,428	Sunlite Casual Furniture (Krs)	Paragould, AR	12/04/2001	Outdoor Patio Furniture.

[FR Doc. 01–32205 Filed 12–31–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,333]

Lynchburg Foundry Company, Radford, VA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 5, 2001 in response to a worker petition which was filed on October 30, 2001 on behalf of workers at Lynchburg Foundry Company, Radford, Virginia. The subject firm is a subsidiary of Intermet Corporation.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–40,060). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 20th day of December 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32207 Filed 12–31–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,387]

STMicroelectronics, Inc. (ST) San Diego, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 3, 2001, in response to a petition filed by a company official on behalf of workers at STMicroelectronics, Inc., San Diego, California.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 21st day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32208 Filed 12–31–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,645]

Texel USA, Inc., Henderson, North Carolina; Notice of Revised Determination on Reconsideration

By letter of July 24, 2001, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on July 2, 2001, based on the finding that imports of nonwoven needle punched felts did not contribute importantly to worker separations at the Henderson plant. The denial notice was published in the **Federal Register** on July 20, 2001 (66 FR 38026).

To support the request for reconsideration, the company supplied additional information which helped clarify information that was provided during the initial investigation. The company indicated they shifted subject plant projection to an affiliated plant located in Canada and simultaneously began importing nonwoven needle punched felts back to the United States to serve their domestic customer base during the relevant period. The imports accounted for a meaningful portion of the subject plant production.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Texel USA, Inc., Henderson, North Carolina, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provision of the Act, I make the following certification:

''All workers of Texel USA, Inc., Henderson, North Carolina, who become totally or partially separated from employment on or after January 29, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, DC this day 11th of December 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–32213 Filed 12–31–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,307]

Universal Furniture Limited, Goldsboro, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 29, 2001 in response to a worker petition which was filed on behalf of workers at Universal Furniture Limited, Goldsboro, North Carolina.

As active certification covering the petitioning group of workers is already in effect (TA–W–38,811A, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 12th day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32211 Filed 12–31–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,811 and TA–W–38,811A]

Universal Furniture Limited, Morristown, Tennessee and Goldsboro, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 30, 2001, applicable to workers of Universal Furniture Limited, Morristown, Tennessee. The notice was published in the **Federal Register** on May 18, 2001 (66 FR 27690).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. Information shows that worker separations occurred at the Goldsboro,

North Carolina location of the subject firm when it closed in March, 2001. The Goldsboro, North Carolina workers were engaged in the production of bedroom and dining room furniture.

Accordingly, the Department is amending the certification to include workers of Universal Furniture Limited, Goldsboro, North Carolina.

The intent of the Department's certification is to include all workers of Universal Furniture Limited who were adversely affected by increased imports.

The amended notice applicable to TA–W–38,811 is hereby issued as follows:

''All workers of Universal Furniture Limited, Morristown, Tennessee (TA–W–38,811) and Goldsboro, North Carolina (TA–W–38,811A) who became totally or partially separated from employment on or after March 10, 2000, through April 30, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 12th day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32212 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[Docket No. [TA–W–38, 495]

VF Imagewear, East (Formerly VF Knitwear) Martinsville, Virginia Including Employees of VF Imagewear East Located in Golden Valley, Minnesota Dallas, Texas, Portland, Oregon, Salisbury, Maryland; Amended Certification Regarding Eligibility To Apply Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1994 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 17, 2001, applicable to workers of VF Imagewear East (formerly VF Knitwear), Martinsville, Virginia. The notice was published in the **Federal Register** on May 3, 2001 (66 FR 22262).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred involving employees of the Martinsville, Virginia facility of VF Imagewear East, (formerly VF Knitwear), located in Golden Valley, Minnesota, Dallas, Texas, Portland, Oregon and Salisbury, Maryland. These employees are engaged in employment related to the production of fleece apparel, including jerseys and T-shirt at the Martinsville, Virginia location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Martinsville, Virginia facility of VF Imagewear East, (formerly VF Knitwear), located in Golden Valley, Minnesota, Dallas, Texas, Portland, Oregon and Salisbury, Maryland.

The intent of the Department's certification is to include all workers of VF Imagewear East (formerly VF Knitwear) adversely affected by increased imports.

The amended notice applicable to TA–W–38, 495 is hereby issued as follows:

''All workers of VF Imagewear East, (formerly VF Knitwear), Martinsville, Virginia, including workers of the Martinsville, Virginia facility located in Golden Valley, Minnesota, Dallas, Texas, Portland, Oregon and Salisbury, Maryland, who became totally or partially separated from employment on or after December 13, 1999, through April 17, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 24th day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32210 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 14, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 14, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 3rd day of December, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 12/03/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,376	Wheeling Corrugating Co. (Wkrs)	Kirkwood, NY	11/25/2001	Corrugated Steel Roofing and Siding.
40,377	Dexter Shoe (Co.)	Dexter, ME	11/20/2001	Footwear.
40,378	Chrissann Dress Co. (UNITE)	Franklin Square, NY	10/18/2001	Ladies' Dresses.
40,379	HC Contracting, Inc (UNITE)	New York, NY	10/31/2001	Ladies' Sportswear.
40,380	HLS Fashions Corp (UNITE)	New York, NY	10/31/2001	Ladies' Dresses.

APPENDIX—Continued

[Petitions Instituted On 12/03/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,381	Four Seasons Fashion Mfg (UNITE)	New York, NY	10/31/2001	Ladies' Sportswear.
40,382	Corning Asahi Video (AFGWU)	State College, PA	11/25/2001	TV Panels and Tubes.
40,383	New GLI, Inc (Wkrs)	Columbus, IN	06/03/2001	Television Cabinets.
40,384	K.S. Bearing, Inc. (UAW)	Greensburg, IN	11/16/2001	Bushings, Bearings and Washers.
40,385	Steag Hamatech (Wkrs)	Saco, ME	11/20/2001	Unijet DVD.
40,386	Celestica Corporation (Co.)	Milwaukie, OR	11/19/2001	Power Supplies.
40,387	STMicroelectronics (Co.)	San Diego, CA	11/16/2001	Semiconductor Wafers.
40,388	X Fab Texas (Wkrs)	Lubbock, TX	11/15/2001	Micro Chips.
40,389	BP/Amoco Oil (Wkrs)	Chicago, IL	11/26/2001	Exploration & Prod. of Oil and Gas.
40,390	Carlisle Engineered (USWA)	Lake City, PA	10/23/2001	Plastic Injected Molded Parts.
40,391	Deck Bros (USWA)	Buffalo, NY	09/18/2001	Heat Sinks, Bus Bar and Castings.
40,392	A.S. Haight (UNITE)	Cartersville, GA	11/19/2001	Screen Printing Cloth.
40,393	Stylemaster Apparel (Wkrs)	Union, MO	11/27/2001	Hats.
40,394	N and H Corporation (Co.)	Mohnton, PA	11/06/2001	Knit Sportswear.
40,395	Lexmark International (Co.)	Lexington, KY	11/20/2001	Laster and Inkjet Printers, Cartridges.

[FR Doc. 01–32206 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5506]

Syst-A-Matic Tool and Design, Meadville, PA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on October 29, 2001, in response to a petition filed by the company on behalf of workers at Syst-A-Matic Tool and Design, Meadvile, Pennsylvania.

The petitioning worker group is the subject of an existing NAFTA petition investigation (NAFTA–5471). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 20th day of December 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32204 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

1611 Negotiated Rulemaking Working Group Meeting Notice

TIME AND DATE: The Legal Services Corporation's 1611 Negotiated Rulemaking Working Group will meet on January 7–8, 2002. The meeting will begin at 9 a.m. on January 7, 2002. It is anticipated that the meeting will end by 5 p.m. on January 8, 2002.

LOCATION: The meeting will be held in the First Floor Conference Room at the offices of Marasco Newton Group, Inc., 2425 Wilson Blvd., Arlington, VA 22201.

STATUS OF MEETING: This meeting is open to public observation.

CONTACT PERSON FOR INFORMATION: Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC 20001; (202) 336–8817.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Naima Washington at 202–336–8841; *washingn@lsc.gov.*

Dated: December 27, 2001.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 01–32250 Filed 12–31–01; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before February 19, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is

completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by fax to 301–713–6852 or by e-mail to *records.mgt@arch2.nara.gov.* Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael Miller, Director, Modern Records Programs (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: *records.mgt@arch2.nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Agricultural Research Service (N1–310–98–2, 2 items, 2 temporary items). Analytical reports and related materials pertaining to the evaluation of pesticides and commodities for potential benefits and risks under the National Agricultural Pesticide Impact Program. Also included are electronic copies of records created using electronic mail and word processing.

2. Department of the Army, Agency-wide (N1–AU–02–2, 2 items, 2 temporary items). Records relating to the receipt, storage, maintenance, and disposition of installed property and facilities engineering stock. Included are vouchers, stock record cards, purchase orders, property turn-in slips, and inventory adjustment reports. Also included are electronic copies of documents created using electronic mail and word processing. The schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of Commerce, Emergency Steel Loan Guarantee Board and Emergency Oil and Gas Guaranteed Loan Board, (N1–40–01–3, 6 items, 4 temporary items). Loan guarantee records, including electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of program correspondence and files of Board meeting minutes and testimony.

4. Department of Defense, Joint Staff (N1–218–00–3, 42 items, 36 temporary items). Records relating to personnel and payroll matters accumulated by the Joint Staff and combatant commands. Records relate to such matters as directives, general personnel and payroll administration, civilian employment, merit pay, pay differentials and allowances, retirement operations, displaced employee programs, equal employment opportunity surveys, labor management relations, promotions and demotions, military awards and assignments, training, time and attendance, and employee political activities. Also included are electronic copies of documents created using electronic mail and word processing and electronic systems maintained at combatant commands that feed into systems maintained at higher levels. Recordkeeping copies of records documenting such matters as decorations to civilians and foreign nationals, military awards, nominations for promotion submitted to the Secretary of Defense, casualty reporting, and training and education programs are proposed for permanent retention.

5. Department of Defense, Defense Information Systems Agency (N1–371–02–1, 4 items, 4 temporary items). Records relating to the Defense Department's Public Key Infrastructure program. Included are paper copies and scanned images of completed forms documenting subscriptions to the Department of Defense Public Key Infrastructure and related actions. Also included are electronic copies of documents created using electronic mail and word processing.

6. Department of Defense, Defense Contract Audit Agency (N1–372–01–3, 6 items, 6 temporary items). Records pertaining to the management of the agency Web site. Included are policies and procedures, Web site usage statistics, and recurring reports. Also included are electronic copies of documents created using electronic mail and word processing. This schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of Defense, National Reconnaissance Office (N1–525–02–1, 11 items, 10 temporary items). Audit files, posters covering routine events and subjects, poster production materials, equipment and property accounting files, certification authority records, and application system security files. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are posters relating to mission-related subjects, such as agency facilities, operations, achievements, and historical commemorations.

8. Department of Energy, Office of the Executive Secretariat (N1–434–00–5, 4 items, 4 temporary items). Correspondence from the general public addressed to the President of the United States relating to energy that has been

forwarded to the agency for response as well as public correspondence addressed to the Secretary of Energy. Also included are electronic copies of documents created using electronic mail and word processing.

9. Department of the Interior, National Park Service (N1–79–01–1, 2 items, 2 temporary items). Administrative case files accumulated by the Historic American Buildings Survey/Historic American Engineering Record relating to efforts to document endangered structures. Also included are electronic copies of records created using electronic mail and word processing.

10. Department of State, Bureau of Human Resources (N1–59–00–11, 15 items, 13 temporary items). Records relating to performance evaluations of agency employees and the granting of awards, including subject files and tracking databases. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of general subject files documenting the performance evaluation of Foreign Service Officers and promotion board meeting files.

11. Department of State, Bureau of Political-Military Affairs (N1–59–01–17, 15 items, 13 temporary items). Records of the Office of International Security Operations relating to such matters as clearances for overflights, foreign employment, medical requests, military exercises, counter-drug operations and deployments, and daily activity reporting. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of subject files on international security operations and files that relate to specific issues, such as human rights, port visits, military exercises, and humanitarian assistance.

12. Department of the Treasury, Bureau of the Public Debt (N1–53–02–1, 10 items, 10 temporary items). Electronic system containing annual maintenance fee information for investor accounts exceeding a threshhold par value. Included are inputs, outputs, master files, and system documentation. Also included are electronic copies of system documentation created using electronic mail and word processing.

13. Department of the Treasury, Bureau of the Public Debt (N1–53–02–2, 8 items, 8 temporary items). Electronic system containing transactional information and verification tables for securities investors conducting purchases or reinvestments via telephone or the Internet. Included are inputs, outputs, master files, and system documentation. Also included are electronic copies of system documentation created using electronic mail and word processing.

14. Tennessee Valley Authority, Fossil Power Group (N1–142–02–2, 3 items, 3 temporary items). Records relating to safety inspections of heavy machinery and equipment. Included are such records as visual inspection checklists, monthly crane safety inspections, and daily truck inspection reports. Also included are electronic copies of documents created using electronic mail and word processing.

Dated: December 19, 2001.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 01–32174 Filed 12–31–01; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 52, ''Early Site Permits (ESP); Standard Design Certifications; and Combined Licenses for Nuclear Power Plants''.

2. *Current OMB approval number:* 3150–0151.

3. *How often the collection is required:* One occasion and every 10 to 20 years for applications for renewal.

4. *Who is required or asked to report:* Designers of commercial nuclear power plants, electric power companies, and any person eligible under the Atomic Energy Act to apply for a construction permit for a nuclear power plant.

5. *The number of annual respondents:* 5—3 applications for Early Site Permits, 1 combined license application, and 1 design certification application.

6. *The number of hours needed annually to complete the requirement or request:* 211,820.

7. *Abstract:* 10 CFR part 52 establishes requirements for the granting of early site permits, certifications of standard nuclear power plant designs, and licenses which combine in a single license a construction permit, and an operating license with conditions (combined licenses), manufacturing licenses, duplicate plant licenses, standard design approvals, and pre-application reviews of site suitability issues. Part 52 also establishes requirements for renewal of these approvals, permits, certifications, and licenses; amendments to them; exemptions from certifications; and variances from early site permits.

NRC uses the information collected to assess the adequacy and suitability of an applicant's site, plant design, construction, training and experience, and plans and procedures for the protection of public health and safety. The NRC review of such information and the findings derived from that information from the basis of NRC decisions and actions concerning the issuance, modification, or revocation of site permits, design certifications, and combined licenses for nuclear power plants.

Submit, by March 4, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *BJS1@NRC.GOV.*

Dated at Rockville, Maryland, this 26th day of December, 2001.

For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–32215 Filed 12–31–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 31, 2001, January 7, 14, 21,28, February 4, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 31, 2001

There are no meetings scheduled for the Week of December 31, 2001.

Week of January 7, 2002—Tentative

There are no meetings scheduled for the Week of January 7, 2001.

Week of January 14, 2002—Tentative

Tuesday, January 15, 2002

9:30 a.m.

Briefing on Status of Nuclear Materials Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of January 21, 2002—Tentative

There are no meetings schedules for the Week of January 21, 2002.

Week of January 28, 2002—Tentative

Tuesday, January 29, 2002

9:30 a.m.

Briefing on Status of Nuclear Reactor Safety (Public Meeting) (Contact Mike Case, 301–415–1134)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Wednesday, January 30, 2002

9:30 a.m.

Briefing on Status of Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (contact: Jackie Silber, 301–415–7330)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

2:00 p.m.

Discussion of Intragovernmental Issues (Closed—Ex. 1 & 9)

Week of February 4, 2002—Tentative

Wednesday, February 6, 2002

9:30 a.m.

Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: December 27, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–32255 Filed 12–28–01; 12:12 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Extension; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549.

Extension: Form N–14, SEC File No. 270–297, OMB Control No. 3235–0336.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form N–14—Registration Statement Under the Securities Act of 1933 for Securities Issued in Business Combination Transactions by Investment Companies and Business Development Companies. Form N–14 is used by investment companies registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''Investment Company Act'') and business development companies as defined by section 2(a)(48) of the Investment Company Act to register securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] to be issued in business combination transactions specified in Rule 145(a) (17 CFR 230.145(a)) and exchange offers. The securities are registered under the Securities Act to ensure that investors receive the material information necessary to evaluate securities issued in business combination transactions. The Commission staff reviews registration statements on Form N–14 for the adequacy and accuracy of the disclosure contained therein. Without Form N–14, the Commission would be unable to verify compliance with securities law requirements. The respondents to the collection of information are investment companies or business development companies issuing securities in business combination transactions. The estimated number of responses is 485 and the collection occurs only when a merger or other business combination is planned. The estimated total annual reporting burden of the collection of information is approximately 620 hours per response for a new registration statement, and approximately 350 hours per response for an amended Form N–14, for a total of 257,770 annual burden hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the Commission's mission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 20, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–32201 Filed 12–31–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45183; File No. SR–Phlx–2001–97]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Relating to the Establishment of a Competing Specialist Program

December 21, 2001.

On October 22, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a competing specialist program.

The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on November 13, 2001.[3] No comments were received on the proposal. In this order, the Commission is approving the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, with the requirements of Section 6(b)(5).[5]

The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] because it is designed to perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that a competing specialist program will assist the Exchange in maintaining an efficient and open market.

The Commission approves this proposed rule change provided that the priority of the customer limit order book is preserved by proposed rule 229A consistent with Phlx Rules 218 and 452.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Phlx–2001–97), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–32200 Filed 12–31–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45013 (November 2, 2001), 66 FR 56879.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3866]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Benjamin Brecknell Turner: Rural England Through a Victorian Lens''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Benjamin Brecknell Turner: Rural England Through a Victorian Lens,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY from on or about January 22, 2002 to on or about April 21, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 13, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32226 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3865]

Culturally Significant Objects Imported for Exhibition Determinations: ''Dreaming with Open Eyes: Dada and Surrealist Art From the Vera, Silvia, and Arturo Schwarz Collection in the Israel Museum''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Dreaming with Open Eyes: Dada and Surrealist Art from the Vera, Silvia, and Arturo Schwarz Collection in the Israel Museum,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Fine Arts Museums of San Francisco, San Francisco, CA from on or about February 2, 2002 to on or about April 28, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 13, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32225 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3869]

Culturally Significant Objects Imported for ExhibitionDeterminations: ''Gerhard Richter: Forty Years of Painting''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Gerhard Richter: Forty Years of Painting,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, NY, from on or about February 13, 2002, through May 21, 2002; The Art Institute of Chicago from on or about June 22, 2002, to September 15, 2002; the San Francisco Museum of Modern Art from on or about October 11, 2002, to January 14, 2003; and the Hirshhorn Museum and Scultpure Garden from on or about February 20, 2003, to May 18, 2003, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 21, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32230 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3870]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Orazio and Artemisia Gentileschi: Father and Daughter Painters in Baroque Italy''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Orazio and Artemisia Gentileschi: Father and Daughter Painters in Baroque Italy'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about February 11, 2002, through May 12, 2002, and The St. Louis Art Museum in Missouri, from on or about June 15, 2002, to September 15, 2002, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 21, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32229 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3867]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Reflections of Sea and Light: Paintings and Watercolors by J.M.W. Turner From Tate''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Reflections of Sea and Light: Paintings and Watercolors by J.M.W. Turner from Tate,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Baltimore Museum of Art, Baltimore, MD from on or about February 11, 2002 to on or about May 26, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 13, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32227 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3868]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Treasures of the Russian Czars''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Treasures of the Russian Czars,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at Wonders, Memphis, TN from on or about April 15, 2002 to on or about September 15, 2002, the Kansas International Museum, Topeka, KS from on or about October 15, 2002 to on or about March 15, 2003, and possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 13, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32228 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–121]

Determination of Action To Increase Duties on Certain Products of Ukraine Pursuant to Section 301(b): Intellectual Property Laws and Practices of the Government of Ukraine

AGENCY: Office of the United States Trade Representative.

ACTION: Notice

SUMMARY: The United States Trade Representative (Trade Representative) has determined that appropriate action to obtain the elimination of the acts, policies, and practices of the Government of Ukraine that result in the inadequate protection of intellectual property rights includes the imposition of prohibitive duties on the annexed list of Ukrainian products.

EFFECTIVE DATES: A 100 percent *ad valorem* rate of duty is effective with respect to the articles of Ukraine described in the Annex to this notice that are entered, or withdrawn from warehouse, for consumption on or after January 23, 2002. In addition, any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after January 23, 2002 must be admitted as ''privileged foreign status''.

FOR FURTHER INFORMATION CONTACT: Kira Alvarez, Office of Services, Investment and Intellectual Property, Office of the United States Trade Representative (202) 395–6864; David Birdsey, Office of European Affairs, Office of the United States Trade Representative, (202) 395–3320; or William Busis, Office of the General Counsel, Office of the United States Trade Representative, (202) 395–3150. For questions concerning product classification, please contact the General Classification Branch, Office of Regulations and Rulings, U.S. Customs Service, (202) 927–2388, and for questions concerning entries, please contact Yvonne Tomenga, Program Officer, Office of Trade Compliance, U.S. Customs Service, (202) 927–0133.

SUPPLEMENTARY INFORMATION: In a notice published on April 6, 2001 (66 FR 18,346), the Office of the United States Trade Representative (''USTR'') announced the initiation of an investigation under sections 301 to 309 of the Trade Act of 1974, as amended (the Trade Act), regarding the Government of Ukraine's intellectual property protection laws and practices, including the Government of Ukraine's failure to use existing law enforcement authority to stop the ongoing unauthorized production of optical media products and failure to enact an optical media licensing regime that would preclude the piracy of such products. See 66 FR 18,346 (April 6, 2001). In a notice published on August 10, 2001, USTR announced that the Trade Representative had determined that these acts, policies, and practices of Ukraine with respect to the protection of intellectual property rights are unreasonable and burden or restrict United States commerce and are thus actionable under section 301(b) of the Trade Act. See 66 FR 42,246 (Aug. 10, 2001). The notice also announced that the Trade Representative had determined that appropriate action to obtain the elimination of such acts, policies, and practices included the suspension of duty-free treatment accorded to products of Ukraine under the Generalized System of Preferences.

The August 10, 2001 notice announced that further action might include the imposition of prohibitive duties on products of Ukraine to be drawn from a preliminary product list. USTR invited interested persons to submit written comments and to participate in a public hearing on September 11, 2001. Because the development of the final product list involved complex and complicated issues that required additional time, the Trade Representative determined under section 304(a)(3)(B) of the Trade Act to extend the investigation by 3 months, or until December 12, 2001. The public hearing was postponed and held on September 25, 2001. See 66 FR 48,898 (Sep. 24, 2001).

On December 11, 2001, the Trade Representative determined under section 304(a)(1)(B) of the Trade Act that appropriate action under section 301(b), in addition to the prior suspension of GSP benefits, included the imposition of 100 percent *ad valorem* duties on Ukrainian products with an annual trade value of approximately $75 million. The level of sanctions is based on the level of the burden or restriction on U.S. commerce resulting from Ukraine's inadequate protection of U.S. intellectual property rights.

The Ukrainian parliament was scheduled to vote on an Optical Disc Licensing (ODL) law on December 20, 2001, and the Government of Ukraine assured in writing that it would make best efforts to ensure passage of the law. In light of these developments, the Trade Representative determined under section 305(a)(2)(A) of the Trade Act that substantial progress was being made and that a delay was necessary or desirable to obtain a satisfactory solution, and postponed implementation of the action until December 20, 2001.

On December 20, 2001, however, the Ukrainian parliament voted down the ODL law. Consequently, on that same day the Trade Representative announced that he was imposing prohibitive duties on Ukrainian products with an annual trade value of approximately $75 million, and announced the final product list on the following day.

Imposition of Prohibitive Duties

The Trade Representative has determined that appropriate action under section 301(b) of the Trade Act is to impose a 100% *ad valorem* rate of

duty on the articles of Ukraine described in the Annex to this notice, effective with respect to goods entered, or withdrawn from warehouse, for consumption on or after January 23, 2002. Accordingly, effective January 23, 2002, the Harmonized Tariff Schedule of the United States (HTS) is hereby modified in accordance with the Annex to this notice. In addition, any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after January 23, 2002 must be admitted as ''privileged foreign status'' as defined in 19 CFR 146.41.

The scope of this action under section 301 is governed by the HTS nomenclature for the preexisting HTS subheadings identified in parentheses for each of the new Chapter 99 subheadings in the Annex to this notice. The verbal product descriptions for the new Chapter 99 subheadings in the Annex are not definitive. Issues regarding the classification of particular products would be decided by the U.S. Customs Service under its usual rules and procedures for product classification.

William L. Busis,

Chairman, Section 301 Committee.

Annex

The Harmonized Tariff Schedule of the United States (HTS) is modified by adding in numerical sequence the following superior text and subheadings to subchapter III of chapter 99 to the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated ''Heading/Subheading'', ''Article Description'', and ''Rates of Duty 1–General'', respectively.

	''Articles the product of Ukraine:	
9903.27.01	Distillate and residual fuel oils (including blended fuel oils) and wastes of distillate and residual fuel oils (whether or not blended) (provided for in subheading 2710.19.05, 2710.19.10,2710.99.05 or 2710.99.10)	100%
9903.27.02	Rare gases, other than argon (provided for in subheading 2804.29.00)	100%
9903.27.03	Germanium oxides and zirconium dioxide (provided for in subheading 2825.60.00)	100%
9903.27.04	Carbides of silicon (provided for in subheading 2849.20.10 or 2849.20.20)	100%
9903.27.05	Other mineral or chemical fertilizers, containing nitrates and phosphates (provided for in subheading 3105.51.00)	100%
9903.27.06	Pigments and preparations based on titanium dioxide (provided for in subheading 3206.11.00 or 3206.19.00)	100%
9903.27.07	Other uncoated, unbleached kraft paper and paperboard, in rolls or sheets, weighing 225 g/m2 or more (provided for insubheading 4804.51.00)	100%
9903.27.08	Other footwear with outer soles of rubber, plastics or composition leather and uppers of leather (provided for in subheading 6403.99.60, 6403.99.75 or 6403.99.90)	100%
9903.27.09	Other footwear with outer soles of rubber or plastics and uppers of textile materials, with open toes or open heels, or of the slip-on type (provided for in subheading 6404.19.35)	100%
9903.27.10	Diamonds, unsorted (provided for in subheading 7102.10.00)	100%
9903.27.11	Diamonds, nonindustrial (provided for in subheading 7102.31.00 or 7102.39.00)	100%
9903.27.12	Catalysts in the form of wire cloth or grill, of platinum (provided for in subheading 7115.10.00)	100%
9903.27.13	Unrefined copper; copper anodes for electrolytic refining (provided for in heading 7402.00.00)	100%
9903.27.14	Other unwrought aluminum alloys (provided for in subheading 7601.20.90)	100%
9903.27.15	Other refrigerating or freezing equipment; heat pumps (provided for in subheading 8418.69.00)	100%''

[FR Doc. 01–32231 Filed 12–31–01; 8:45 am]
BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending December 14, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the applications.

Docket Number: OST–2001–11132
Date Filed: December 10, 2001
Parties: Members of the International Air Transport Association
Subject: PTC3 0528 dated 11 December 2001
Mail Vote 185—Resolution 010q
TC3 Japan, Korea-South East Asia Special Passenger Amending Resolution from Korea (Rep. of) to Chinese Taipei
Intended effective date: 15 December 2001

Docket Number: OST–2001–11163
Date Filed: December 12, 2001
Parties: Members of the International Air Transport Association
Subject:
PTC3 0521 dated 11 December 2001
TC3 Areawide Expedited Resolution 015v r–1
PTC3 0522 dated 11 December 2001
TC3 Within South East Asia Expedited Resolutions r2–r4
PTC3 0523 dated 11 December 2001
TC3 Within South West Pacific Expedited Resolution 002yy r–5
PTC3 0524 dated 11 December 2001
TC3 between South East Asia and South West Pacific
Expedited Resolution 002tt r–6
PTC3 0525 dated 11 December 2001
TC3 between Japan, Korea and South Asian Subcontinent
Expedited Resolution 002xx r–7
PTC3 0526 dated 11 December 2001
TC3 between Japan, Korea and South East Asia ExpeditedResolution 002vv r–8
Intended effective date: 15 January 2002

Docket Number: OST–2001–11175
Date Filed: December 12, 2001
Parties: Members of the International Air Transport Association
Subject: PTC23 EUR–SASC 0083 dated 11 December 2001
TC23 Europe-South Asian Subcontinent Expedited Resolutions
Intended Effective Date: 1 February 2002

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 01–32237 Filed 12–31–01; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 14, 2001

The following applications for certificates of public convenience and

necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's procedural regulations (See 14 CFR 301.201 *et seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–11156.

Date Filed: December 11, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 2, 2002.

Description: Application of Westjet, pursuant to 49 U.S.C. section 41303, requesting a transfer of the foreign air carrier permit of WestJet Airlines Ltd. to engage in chartered and scheduled foreign air transportation of persons, property and mail between US and Canadian points, operating as ''WestJet.''

Docket Number: OST–2001–11164.

Date Filed: December 12, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 2, 2002.

Description: Application of Caribbean Star Airlines, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting the issuance of a certificate of public convenience and necessity to engage in scheduled and charter foreign air transportation of persons, property and mail between points in Florida and Puerto Rico, on the one hand, and points throughout the Caribbean region, Mexico and Central and South America, on the other hand.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 01–32236 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Yuba and Sutter Counties, State of California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Yuba and Sutter Counties, State of California. The proposed project is called the Third Bridge Crossing of the Feather River.

FOR FURTHER INFORMATION CONTACT:

Mike Bartlett, Chief, Office of Environmental Management, 1303 O Street, 2nd Fl., Sacramento, CA 95814, (916) 324–5150.

Maiser Khaled, Chief, District Operations, Federal Highway Administration, 980 Ninth Street, Suite 400, Sacramento, CA 95814, (916) 498–5020.

SUPPLEMENTARY INFORMATION: The proposed project would construct a freeway system to link SR 65/70 with SR 99 and construct a bridge structure over the Feather River. The east-west freeway link would cross the Feather River south of Marysville (Yuba County) and Yuba City (Sutter County). Located near and within the project area are the communities of Olivehurst, Alicia, Linda, Yuba City and the City of Marysville.

Scoping Process

The project has been in the planning stages since the 1980's. A Notice of Intent was published in December 1989, however, the project was tabled due to lack of funding. In the interim, the California Department of Transportation (Caltrans) has conducted meetings with the public, with local governmental officials and with jurisdictional agencies. A preliminary environmental analysis was performed in June and July 2000. Caltrans with FHWA initiated the NEPA/404 Integration and the Purpose and Need for the project has been reviewed by agencies with jurisdiction. In addition, a series of four workshops was held in the twin-cities area of Yuba City/Marysville in the last three years. One workshop was specifically for the Hmong (Southeast Asian refugees) community of Yuba County, which is in close proximity to the eastern end of the project. Special outreach efforts were complemented with Hmong-English translators and community representatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations/citizens who have previously expressed or are known to have interest in this proposal. At the time the draft environmental impact statement is circulated for public comments, a public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: November 29, 2001.

Maiser Khaled,

Chief, District Operations, California Division.

[FR Doc. 01–32157 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–22–M

Notices

Federal Register

Vol. 67, No. 1

Wednesday, January 2, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice, renewal of charter, and request for nominations.

SUMMARY: The Secretary of Agriculture intends to renew the charter of the Lake Tahoe Federal Advisory Committee, chartered under the Federal Advisory Committee Act, to provide advice to the Secretary of Agriculture on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region. Nominations of persons to serve on the Committee are invited.

DATES: Nominations for membership on the Committee must be received in writing by February 1, 2002.

ADDRESSES: Send nominations and applications with telephone numbers for membership on the Committee to: FACA Nomination, Lake Tahoe Basin Management Unit, 870 Emerald Bay Road, South Lake Tahoe, California 96150.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson, Forest Supervisor, or Jeannie Stafford, Environmental Improvement Program and Partnership Liaison, Lake Tahoe Basin Management Unit, telephone (530) 573–2773.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture intends to renew the charter of the Lake Tahoe Basin Federal Advisory Committee. The purpose of the Committee is to provide advice to the Secretary of Agriculture on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Basin and other matters raised by the Secretary.

The Secretary has determined that the work of the Committee is in the public interest and relevant to the duties of the Department of Agriculture.

The Committee will meet on a quarterly basis, conducting public meetings to discuss management strategies, gather information and review federal agency accomplishments, and prepare a progress report every six months for submission to regional federal executives. Representatives will be selected from the following sectors: (1) Gaming, (2) environmental, (3) national environmental, (4) ski resorts, (5) North Shore economic/recreation, (6) South Shore economic/recreation, (7) resort associations, (8) education, (9) property rights advocates, (10) member-at-large, (11) member-at-large, (12) science and research, (13) local government, (14) Washoe Tribe, (15) State of California, (16) State of Nevada, (17) Tahoe Regional Planning Agency, (18) labor, (19) transportation, and (20) member-at-large. Nominations to the Committee should describe and document the proposed member's qualifications for membership on the Lake Tahoe Basin Advisory Committee. The Committee Chair will be recommended by the Committee and approved by the Secretary. Vacancies on the Committee will be filled in the manner in which the original appointment was made.

Appointments to the Committee will be made by the Secretary of Agriculture. Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include to the extent practicable individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

Dated: December 21, 2001.

Maribeth Gustafson,

Acting Forest Supervisor.

[FR Doc. 01–32138 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Deep Management Project, Colville National Forest, Stevens County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) on a proposal to conduct vegetation and road management, and implement riparian and wetlands management. The Proposed Action will be in compliance with the 1988 Colville National Forest Land and Resource Management Plan (Forest Plan) as amended, which provides the overall guidance for management of this area. The Proposed Action is within portions of the South Deep Creek, Little Smackout Creek, Meadow Creek, Rocky Creek, Kolle Creek, Clinton Creek, Rogers Creek, Kenny Creek, and Scott Creek subwatersheds on the Three Rivers Ranger District and scheduled for implementation in fiscal year 2003. The Colville National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may be able to participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis should be postmarked by February 1, 2002.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Sherri Schwenke, District Range, 255 West 11th, Kettle Falls, Washington, 99141. Comments may also be sent by FAX (509–738–7701). Include your name and mailing address with your comments so documents pertaining to this project may be mailed to you.

FOR FURTHER INFORMATION CONTACT: Questions about the Proposed Action and EIS should be directed to Sherri Schwenke, District Ranger, or to Tom Pawley, Planning Assistant, 255 West 11th Ave, Kettle Falls, Washington 99141 (phone: 509–738–7700).

SUPPLEMENTARY INFORMATION: The Proposed Action includes vegetation management using commercial and precommercial thinning on approximately 6,100 acres. Prescribed Fire may be applied on up to 6,500 acres. The road management projects will include local governments and adjacent landowners in the evaluation and development of a road strategy for these drainages. Part of that strategy will include both building and closing roads.

This proposal includes construction of approximately 19 miles of new roads. Research studies are proposed as a part of the South Deep Management Project in conjunction with the University of Washington, Washington State University, the University of Idaho, and the U.S. Forest Service Pacific Northwest Research Station. Studies concerning soil compaction, erosion, sedimentation resulting from active stream corridor treatments, silviculture, harvesting systems, and use of a computerized landscape management system are included in the project design.

The project would be located approximately 15 miles northeast of Colville, Washington, along the Aladdin Highway. The South Deep Management Project is proposed within the South Deep Creek, Little Smackout Creek, Meadow Creek, Rocky Creek, Kolle Creek, Clinton Creek, Rogers Creek, Kenny Creek, and Scott Creek subwatershed on the Three Rivers Ranger District. This analysis will evaluate a range of alternatives for implementation of the project activities. The area being analyzed is approximately 38,300 acres, of which 29,740 acres are National Forest System lands. The other ownership areas are included only for analysis of effects. The project area does not include any wilderness, RARE II, or other inventoried roadless land.

The preliminary issues that have been identified include: water quality and watershed restoration; forest stand density; uses of unroaded areas; forest road management and maintenance; and soil stabilization. A range of alternatives will be considered, including a no-action alternative

Initial scoping began in October, 1998. The scoping process will include the following: identify and clarify issues; identify key issues to be analyzed in depth; explore alternatives based on themes which will be derived from issues recognized during scoping activities; and identify potential environmental effects of the Proposed Action and alternatives. The Forest Service is seeking information, comments, and assistance from other agencies, organizations, Indian Tribes, and individuals who may be interested in or affected by the Proposed Action. This input will be used in preparation of the draft EIS. Your comments are appreciated throughout the analysis process.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered, however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The draft EIS is to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September, 2002. The EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, Indian Tribes, and members of the public for their review and comment.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*;, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is scheduled to be available by December, 2002. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The Responsible Official is Colville National Forest Supervisor, Nora Rasure. She will decide which, if any, of the alternatives will be implemented. Her decision and rationale for the decision will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: December 17, 2001.

Nora B. Rasure,

Forest Supervisor.

[FR Doc. 01–32171 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trout-West Fuels Reduction Project, Pike and San Isabel National Forests, Teller, Douglas and El Paso Counties, Colorado

AGENCY: Forest Service, United States Department of Agriculture (USDA–FS).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA–FS will prepare an Environmental Impact Statement (EIS) to analyze and disclose the potential impacts of a site-specific proposal to reduce hazardous fuels on National Forest Lands in the Trout-West area. Management direction guiding the proposed project is contained within the 1984 Pike and San Isabel National Forests; Comanche and Cimarron National Grasslands Land and Resource Management Plan, and the 2000 National Fire Plan. The National Fire Plan identified Woodland Park, Colorado as an urban interface community at risk from catastrophic wildfire. The proposed project is intended to decrease the threat of

wildfire to Woodland Park and surrounding communities by reducing hazardous fuels within the urban interface and municipal watershed. Approximately 32,000 acres are proposed for treatment. This proposal is scheduled for implementation for ten years following the issuance of a Record of Decision (ROD), approximately 2003 to 2013.

DATES: Issues and comments concerning the Proposed Action must be *received* in writing before February 8, 2002. Correspondence should be addressed to Rochelle Desser, Trout West Team Leader, 201 Caves Highway, Cave Junction, OR 97523.

FOR FURTHER INFORMATION CONTACT: Rochelle Desser in Oregon at 541–592–4075 (*rdesser@fs.fed.us*) or Bob Post at Fairplay, Colorado, 719–836–2031, (*bpost@fs.fed.us*). Information about the project will be posted on the Pike-San Isabel National Forest Web site: (*http://www.fs.fed.us/r2/psicc/pp/*).

SUPPLEMENTARY INFORMATION: The Trout and West Creek Watersheds contain approximately 137,990 acres, located within all or parts of T.9S, R.68W; T.9S, R69W; T.9S, R70W; / T.10S, R.68W; T.10S, R69W; T.10S, R70W; / T.11S, R.68W; T.11S, R69W; T.11S, R.70W; T.11S, R.71W; / T.12S, R.68W; T.12S, R69W; T.12S, R.70W; T.12S, R.71W; / T.13S, R.69W; T.13S, R.70W. The analysis area boundary is bordered to the north by Devils Head Peak and a ridge between Ruby and Bridge Gulch, the eastern boundary is the Rampart Range Road, the southern boundary is bordered by Raspberry Mountain, and the western boundary is just west along County Road 51 to County Road 3 and following north to the west side of Sheepnose Mountain and Thunder Butte connecting at the confluence of Trout and West creek.

The Purpose and Need for the Proposed Action is to decrease the threat of wildfire to Woodland Park and neighboring communities by reducing hazardous fuels within the urban interface and adjacent National Forest lands. Project goals include promoting sustainable forest conditions; encouraging aspen regeneration; reducing risk of erosion and sediment to streams; maintaining municipal water quality; maintaining quality of life; and meeting Forest Plan Standards and Guidelines.

A mix of fuel treatments is proposed across seven project areas within the Trout and West Creek Watersheds including thinning, machine and hand slash piling, and prescribed burning. Private land including developed subdivisions occurs within the seven project areas, however only National Forest within these project areas is considered for treatment. These treatments are intended to reduce the canopy closure, continuity and overall biomass to create more moderate fire behavior if a wildfire were to start in the area.

Some of the trees that need to be cut may be sold as fuel wood, Christmas trees, post and poles, and/or saw logs; however, many areas are not expected to yield a commercial byproduct.

The EIS will analyze the potential effects of the Proposed Action on physical, biological, and social issues including ecosystem health, fuel loading and fire risk, soil and water, air quality, species viability, noxious weeds, cultural resources, and economics. Additional issues may be identified through the scoping process. The Forest Service will develop alternatives to respond to significant issues with the Proposed Action. A no action alternative will be considered.

Public participation is important throughout the analysis. The first time is during the scoping period, when the Forest Service invites input from Federal, State, and local agencies, Indian tribes, and other individuals who may be interested in or affected by the Proposed Action. Please refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environment Policy Act at 40 CFR 1501.7 for more information about scoping.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for review June 2002. A comment period for the Draft EIS will be 45 days from the date that the EPA published the Notice of Availability for appears in the **Federal Register**.

The Forest Service believes it is important to give Reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a Draft EIS must structure their participation in the environmental review process of the proposal so that it is specific, meaningful, and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 60-day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS. Please refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 for more information about how to comment on the upcoming EIS.

After the 60-day comment period ends on the draft EIS, comments will be considered and analyzed by the Agency in preparing the final EIS. The final EIS is scheduled for completion by September 2002. In the final EIS, the Forest Service is required to respond to substantive comments and responses during the comment period.

The Responsible Official for this project is the Pike and San Isabel National Forests, Cimarron and Comanche National Grasslands National Forest Supervisor. The Responsible Official will document the decision and rationale in a Record of Decision (scheduled for November 2002). The Forest Service decision will be subject to appeal under regulations at 36 CFR 215.

Dated: December 10, 2001.

William A. Wood,

Deputy Forest Supervisor.

[FR Doc. 01–32140 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Southeast Washington Resource Advisory Committee (RAC) will meet on January 23, 2002 in Pomeroy, Washington. The purpose of the meeting is to meet as a Committee for the first time and to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on January 23, 2002 from 7 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the Forest Service office located at 71

West Main Street, Pomeroy, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: This will be the first meeting of the committee, and will focus on meeting other RAC members and becoming familiar with duties and responsibilities. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 19, 2001.

Jeff D. Blackwood,

Forest Supervisor.

[FR Doc. 01–32202 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–BH–M

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Columbia County Resource Advisory Committee (RAC) will meet on January 30, 2002 in Dayton, Washington. The purpose of the meeting is to meet as a Committee for the first time and to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on January 30, 2002 from 7 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the Youth Building located at the Columbia County Fairgrounds, Dayton, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: This will be the first meeting of the committee, and will focus on meeting other RAC members and becoming familiar with duties and responsibilities. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 20, 2001.

Jeff D. Blackwood,

Forest Supervisor.

[FR Doc. 01–32203 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–BH–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on January 29, 2002 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on January 29, 2002 from 6 to 8 p.m.

ADDRESSES: The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Suite B, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *1chapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: This will be the second meeting of the committee, and will focus on establishing meeting norms and committee operating guidelines, as well as the process for selecting Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 21, 2001.

S.E. ''Lou'' Woltering,

Forest Supervisor.

[FR Doc. 01–32136 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on February 5, 2002 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on February 5, 2002 from 6 to 8 p.m.

ADDRESSES: The meeting will be held at the Elk Valley Rancheria Community Center, 2298 Norris Avenue, Suite B, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail:*lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will focus on developing the overall strategy for selecting Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 21, 2001.

S.E. ''Lou'' Woltering,

Forest Supervisor.

[FR Doc. 01–32137 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on January 25, 2002, at the South Lake Tahoe City Council Chambers, 1052 Tata Lane, South Lake Tahoe, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held January 25, 2002, beginning at 9 a.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at the South Lake Tahoe City Council Chambers, 1052 Tata Lane, South Lake Tahoe, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit,

Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committees. Items to be covered on the agenda include a review of the Sierra Nevada Forest Plan Amendment, Success of Committee advice, Air Resources Board presentation, and update by HUD on the Chodo project, a long term urban lot strategy, status of the Forest Service land acquisition program at Lake Tahoe, and public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: December 21, 2001.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 01–32139 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Rouge/Umpqua Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Rogue/Umpqua Resource Advisory Committee (RAC) will meet on Wednesday, January 30, and Thursday, January 31, 2002. The meeting is scheduled to begin at 9:30 a.m. on January 30, and at 8:30 a.m. on January 31. Both meetings will conclude at approximately 4:00 p.m. The meetings will be held at the Grants Pass Inn and Suites; 243 NE Morgan Lane, Grants Pass, Oregon; (541) 472–1808. The tentative agenda for January 30 includes: (1) FACA Overview; (2) Roles and Responsibilities for Advisory Committees; (3) Timelines for projects related to the Secure Rural Schools and Community Self-Determination Act of 2000; (4) Election of RAC chairperson; and (5) Public Forum. The Public Forum is tentatively scheduled to begin at 3:20 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. The tentative agenda for January 31 includes: (1) Presentation of projects proposed by the Forest Service; (2) Public Forum. The Public Forum is tentatively scheduled to begin at 3:45 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the January 30 and 31 meetings by sending them to Designated Federal Official Jim Caplan at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Jim Caplan; Umpqua National Forest; PO Box 1008, Roseburg, Oregon 97470; (541) 957–3200.

Dated: December 21, 2001.

Richard Sowa,

Acting Forest Supervisor, Umpqua National Forest.

[FR Doc. 01–32141 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on January 28, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on January 28, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Public Utilities District Conference Room, 26 Ponderosa Lane, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, PO Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. E-mail: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The focus of the meeting is to continue the development of an overall strategy for selecting Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 21, 2001.

S.E. ''Lou'' Woltering,

Forest Supervisor.

[FR Doc. 01–32134 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on February 4, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on February 4, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Public Utilities District Conference Room, 26 Ponderosa Lane, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, PO Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. E-mail: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will focus on selecting Title II projects. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: December 21, 2001.

S.E. 'Lou' Woltering,

Forest Supervisor.

[FR Doc. 01–32135 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place

in Washington, DC on Monday, Tuesday, and Wednesday, January 7–9, 2002, at the times and location noted below.

DATES: The schedule of events is as follows:

Monday, January 7, 2002

11 a.m.–Noon. Ad Hoc Committee—Public Rights-of-Way (Closed Meeting).
1:30 p.m.–5 p.m. Ad Hoc Committee—Public Rights-of-Way (Closed Meeting).

Tuesday, January 8, 2002

9:30 a.m.–10:30 a.m. Committee of the Whole—Recreation Facilities Final Rule (Closed Meeting).
10:30 a.m.–Noon. Technical Programs Committee.
1:30 p.m.–5 p.m. Ad Hoc Committee—Passenger Vessels (Closed Meeting).

Wednesday, January 9, 2002

9 a.m.–10:30 a.m. Planning and Budget Committee.
10:30 a.m.–Noon. Executive Committee.
1:30 p.m.–3 p.m. Board Meeting.

ADDRESSES: The meetings will be held at the Marriott at Metro Center Hotel, 775 12th Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434, extension 113 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items.

Open Meeting

- Executive Director's Report.
- Approval of the Minutes of the March 7, and May 9, 2001 Board Meetings.
- Technical Programs Committee: Construction tolerances, and on-going research and technical assistance projects.
- Planning and Budget Committee: Budget spending plan for fiscal year 2002; fiscal year 2003; and out-of-town meetings.
- Executive Committee: Executive Director's report; and nominating committee.

Closed Meeting

- Ad Hoc Committee on Public Rights-of-Way.
- Committee of the Whole; Recreation Facilities.
- Ad Hoc Committee on Passenger Vessels.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

David M. Capozzi,

Director, Office of Technical and Information Services.

[FR Doc. 01–32235 Filed 12–31–01; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2001) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than the last day of January 2002, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period
Antidumping Duty Proceedings Period	
Brazil:	
Brass Sheet and Strip, A–351–603	1/1/01–12/31/01
Stainless Steel Wire Rod, A–351–819	1/1/01–12/31/01
Canada: Brass Sheet and Strip, A–122–601	1/1/01–12/31/01
France:	
Anhydrous Sodium Metasilicate (ASM), A–427–098	1/1/01–12/31/01
Stainless Steel Wire Rods, A–427–811	1/1/01–12/31/01
Taiwan: Stainless Steel Cooking Ware, A–583–603	1/1/01–12/31/01
The People's Republic of China: Potassium Permanganate, A–570–001	1/1/01–12/31/01
The Republic of Korea: Stainless Steel Cooking Ware, A–580–601	1/1/01—12/31/01
Countervailing Duty Proceedings	
Brazil: Brass Sheet and Strip, C–351–604	1/1/01—12/31/01
Taiwan: Stainless Steel Cooking Ware, C–583–604	1/1/01—12/31/01
The Republic of Korea: Stainless Steel Cooking Ware, C–580–602	1/1/01—12/31/01
Suspension Agreements	
Japan: Sodium Azide, A–588–839	1/1/01—12/31/01

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department changed its requirements for requesting reviews for countervailing duty orders. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the

interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of January 2002. If the Department does not receive, by the last day of January 2002, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 19, 2001.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 01–31838 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Initiation of Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of five-year (''Sunset'') reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of the antidumping duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* covering the same antidumping duty orders.

FOR FURTHER INFORMATION CONTACT: James P. Maeder, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–3330 or (202) 482–5050, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

The Applicable Statue

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the ''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department'') regulations are to 19 CFR part 351 (2001). Pursuant to sections 751(c) and 752 of the Act, an antidumping (''AD'') or countervailing duty (''CVD'') order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for conducting sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Background

Initiation of Reviews

In accordance with 19 CFR 351.218 we are initiating sunset reviews of the following antidumping duty orders:

DOC Case No.	ITC Case No.	Country	Product
A–570–844	731–TA–741	China	Melamine Institutional Dinnerware
A–560–801	731–TA–742	Indonesia	Melamine Institutional Dinnerware
A–583–825	731–TA–743	Taiwan	Melamine Institutional Dinnerware

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*i.e.,* previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's ''Sunset'' Internet website at the following address: *http://ia.ita.doc.gov/sunset*

All submissions in these sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset website for any updates to the service lists before filing any submissions. The Department will make additions to and/or deletions from the service lists provided on the sunset website based on notifications from parties and participation in these reviews. Specifically, the Department will delete from the service lists all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset reviews. The

Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties

Domestic interested parties (defined in 19 CFR 351.102) wishing to participate in these sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the sunset reviews must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: December 18, 2001.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–32245 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–DS–P

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation, 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–046]

Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review.

SUMMARY: On November 21, 2001, the Department of Commerce (the Department) published a notice of initiation and preliminary results of a changed circumstances review of the antidumping duty finding on polychloroprene rubber from Japan. *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 66 FR 58436 (November 21, 2001) (*Preliminary Results*). We have now completed that review. For these final results, as in the *Preliminary Results*, we have determined that the restructured manufacturing and marketing joint ventures, Showa DDE Manufacturing KK (SDEM) and DDE Japan Kabushiki Kaisha (DDE Japan), are the successor-in-interest companies to Dupont Showa Denko (SDP) and its predecessor, Showa Neoprene, for purposes of determining antidumping liability in this proceeding.

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Tom Futtner, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6320 or (202) 482–3814, respectively.

SUPPLEMENTARY INFORMATION

The Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the regulations of the Department are to 19 CFR part 351 (2001).

Background

In a letter dated September 27, 2001, DuPont Dow Elastomers L.L.C. (Dupont Dow) and DDE Japan advised the Department that in 1998, SDP was restructured. The production portion of SDP was renamed SDEM. Further, the marketing end of SDP's business was separated from SDEM and renamed DDE Japan. According to Dupont Dow and DDE Japan, these entities were renamed to reflect Dupont Dow's participation in the joint ventures and to make the companies more globally competitive. Nevertheless, like SDP and similar to Showa Neoprene, the two firms, SDEM and DDE Japan, remained jointly owned ventures of Dupont Dow and Showa Denko KK.

On November 21, 2001, the Department published a notice of initiation and preliminary results of a changed circumstances review of the antidumping duty finding on polychloroprene rubber from Japan. *See Preliminary Results.* Interested parties were invited to comment on the preliminary results. On December 11, 2001, Dupont Dow Elastomers L.L.C. and DDE Japan Kabushiki Kaisha submitted comments. *See* Comments section below.

Scope of Review

Imports covered by this review are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.42.00, 4002.49.00, 4003.00.00, 4462.15.21 and 4462.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS item numbers are provided for convenience and for U.S. Customs Service purposes. The written descriptions remain dispositive.

Successorship

In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (Canadian Brass). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel:*

Final Results of Changed Circumstances Review, 59 FR 6944, 6945 (February 14, 1994) and *Canadian Brass*, 57 FR 20460. Therefore, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company essentially operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

We have examined the information provided by Dupont Dow and DDE Japan in their September 27, 2001 letter and determined that SDEM and DDE Japan are the successor-in-interest companies to SDP and its predecessor, Showa Neoprene. The management, production facilities, supplier relationships, sales facilities and customer base are essentially unchanged from those of SDP, and before that, Showa Neoprene. Therefore, we determine that the new joint venture entities essentially operate in the same manner as the predecessor companies of SDP and Showa Neoprene.

Final Results of Review

Based on our analysis in the *Preliminary Results*, we find that effective January 1, 1998, the restructured manufacturing and marketing joint ventures, SDEM and DDE Japan, are the successor-in-interest companies to Dupont Showa Denko (SDP) and its predecessor, Showa Neoprene. Further, SDEM and DDE Japan should be given the same antidumping duty treatment as SDP and its predecessor, Showa Neoprene, *i.e.,* zero percent antidumping duty cash deposit rate.

Comment: Successorship Effective Date

DuPont Dow and DDE Japan state that the final determination should explicitly indicate that, according to the facts on the record, SDEM and DDE Japan became the successor-in-interest companies to SDP and its predecessor, Showa Neoprene, effective January 1, 1998. *Department's Position*: We agree with DuPont Dow and DDE Japan and the effective date of January 1, 1998 is reflected in the Final Results of Review section below.

Cash Deposit

The cash deposit determination from this changed circumstances review will apply to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. This deposit rate shall remain in effect until publication of the final results of the next relevant administrative review. We will instruct the U.S. Customs Service accordingly.

Notification

This notice also serves as a final reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to timely notify the Department in writing of the return/destruction of APO material is a sanctionable violation.

We are issuing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and Sec. 351.216 of the Department's regulations.

Dated: December 21, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–32244 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Notice of Extension of Time Limit for Preliminary Results of Antidumping New Shipper Review: Silicon Metal From the People's Republic of China

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Maureen Flannery, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington DC 20230; telephone: (202) 482–5255 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351 (2000).

Background

In accordance with 19 CFR 351.213(b)(2), on June 29, 2001, the Department received the timely and properly filed June 28, 2001 request from Groupstars Chemical Company, Ltd., that we conduct a new shipper review of its sales of silicon metal. On July 31, 2001, the Department initiated a new shipper review of the antidumping duty order on silicon metal for the period of review (POR) of June 1, 2000 through May 31, 2001 (66 FR 41508).

Extension of Time Limit for Preliminary Results

Section 351.214(i)(1) of the Department's regulations requires the Department to issue preliminary results of a new shipper review within 180 days of the date of initiation. However, if the Secretary concludes that a new shipper review is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days under section 351.214(i)(2) of the Department's regulations. Because of the problems the respondent has encountered in meeting the Department's filing requirements and the resultant delay to the analysis and verification, we find this review to be extraordinarily complicated.

Therefore, in accordance with section 351.214(i)(2) of the regulations, the Department is extending the 180-day time limit to 300 days. Since the 300th day falls on a federal holiday, the due date for the preliminary results is now the next business day, May 28, 2002. The final results will continue to be due 90 days after the date of issuance of the preliminary results.

Dated: December 20, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 01–32248 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Amended Final Results of the Fourth Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amendment of final results of Countervailing Duty Administrative Review.

SUMMARY: On December 12, 2001, the Department of Commerce published in the **Federal Register** its final results of the fourth administrative review of the countervailing duty order on certain pasta from Italy for the period January

1 through December 31, 1999 (66 FR 64214). On December 10, 2001, we received a timely filed ministerial error allegation. Based on our analysis of this information, the Department of Commerce has revised the net subsidy rate for N. Puglisi & F. Industria Paste Alimentari S.p.A.

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Meg Weems or Craig Matney, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2613 or 482–1778, respectively.

Corrections

N. Puglisi & F. Industria Paste Alimentari S.p.A. (''Puglisi'')

On December 10, 2001, respondent Puglisi timely filed a ministerial error allegation. Puglisi states that, with respect to a Law 64/86 industrial development loan (''IDL''), the Department of Commerce (''the Department'') failed to deduct loan guarantee payments from the gross loan subsidy received by Puglisi during the period of review, resulting in a clerical error. Puglisi further explains that the Department added the loan guarantee payments to the ''total amount of interest and fee payments made'' and then again added the loan guarantee payments to the ''total benchmark interest and fees,'' thereby nullifying the deduction of these fees from the countervailable subsidy. Puglisi suggests that the clerical error be corrected by either not including the annual fee payments in the ''benchmark interest and fee amounts,'' or by deducting the annual fee payments from the gross countervailable subsidy for the loan. The petitioner has not commented on this ministerial error allegation.

We agree with Puglisi that the Department miscalculated the duty rate for one of Puglisi's Law 64/86 IDLs by inadvertently nullifying the deduction of the loan guarantee fees from the countervailable subsidy. We have corrected this error for the amended final results by deducting the annual fee payments from the ''total interest and fee payments made,'' while excluding them from the ''benchmark interest and fee amounts.''

In the final results, we specified a total duty rate of 7.18 percent for Puglisi. In calculating this rate, we erroneously calculated the subsidy rate for Puglisi's Law 64/86 IDL to be 0.14 percent. The Law 64/86 IDL subsidy rate should have been 0.08 percent.

Amended Final Results of Review

Pursuant to the Department's regulations at 19 CFR 351.224(e), we correct the *ad valorem* rate for Puglisi to be 7.12 percent.

The Department will instruct the Customs Service (''Customs'') to assess countervailing duties on all appropriate entries on or after January 1, 1999, and on or before December 31, 1999. The Department will issue liquidation instructions directly to Customs. The amended cash deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This amendment to the final results of the countervailing duty administrative review is in accordance with section 751(a)(1) of the Tariff Act, as amended, (19 U.S.C. 1675(a)(1), 19 CFR 351.213, and 19 CFR 351.221(b)(5)).

Dated: December 26, 2001.

Richard W. Moreland,

Acting Assistant Secretary for, Import Administration.

[FR Doc. 01–32247 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122701A]

Proposed Information Collection; Comment Request; Deep Seabed Mining Regulations for Exploration Licenses

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 4, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joseph P. Flanagan at 301-713-3155, ext. 201 (or via Internet at joseph.flanagan@noaa.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA regulations at 15 CFR 970 govern the issuing and monitoring of exploration licenses under the Deep Seabed Hard Mineral Resources Act. Persons seeking a license must submit certain information that allows NOAA to ensure the applicant meets the standards of the Act. Persons with licenses are required to conduct monitoring and make reports, and they may request revisions to or transfers of licenses.

II. Method of Collection

Paper submissions are used.

III. Data

OMB Number: 0648-0145.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2.

Estimated Time Per Response: 2000-4000 hours per application (no applications are expected) and 20 hours per report.

Estimated Total Annual Burden Hours: 40.

Estimated Total Annual Cost to Public: $120.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 21, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–32239 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072401A]

Small Takes of Marine Mammals Incidental to Specified Activities; Taking of Marine Mammals Incidental to Power Plant Operations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a renewal of a Letter of Authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that a Letter of Authorization (LOA) to unintentionally take small numbers of pinnipeds incidental to routine operations of the Seabrook Station nuclear power plant, Seabrook, NH (Seabrook Station) has been issued to the North Atlantic Energy Service Corporation (North Atlantic).

DATES: Effective from October 19, 2001, until June 26, 2002.

ADDRESSES: A copy of the application, Environmental Assessment, LOA, and other materials used in this document are available by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Simona Perry Roberts, (301) 713–2322, ext 106; Jonathan Wendland, (978) 281–9146.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible method of taking and the requirements pertaining to the monitoring and reporting of such taking.

Five-year regulations (effective from July 1, 1999 through June 30, 2004), including mitigation, monitoring, and reporting requirements, for the incidental taking of harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*), and hooded seals (*Cystophora cristata*) by U.S. citizens engaged in power plant operations at the Seabrook Station nuclear power plant, Seabrook, NH are set out in 50 CFR 216.130 through.137.

Summary of Request

NMFS received a request from North Atlantic in June 2001 for renewal of their LOA, which expired on July 2, 2000, to lethally take 20 harbor seals and 4 of any combination of gray, harp, and hooded seals incidental to power plant operations at Seabrook Station.

Permissible Methods of Taking

According to 50 CFR 216.132, LOAs issued to North Atlantic for Seabrook Station authorize the incidental, but not intentional, take of harbor, gray, harp, and hooded seals in the course of operating the station's intake cooling water system. For a more complete description of the intake systems utilized at Seabrook Station please refer to the final rule (64 FR 28114, May 25, 1999).

Mitigation Requirements

NMFS, in the May 25, 1999, final rule (64 FR 28114), allowed North Atlantic to use the 5-year authorization period (July 1, 1999 through June 30, 2004) to fully explore any feasible mitigation methods, and if methods were not found to be suitable, to explore and undertake, in conjunction with NMFS, steps to promote the conservation of the population of Gulf of Maine seals as a whole.

Monitoring and Reporting Requirements

Monitoring under the renewed LOA must include: (1) twice daily visual inspection of the circulating water and service water forebays; (2) daily inspections of the intake transition structure from April 1 through December 1, unless weather conditions prevent safe access to the structure; (3) screen washings once per day during the peak months of seal takes and twice a week during non-peak months of seal takes; and, (4) examination of the screen wash debris to determine if any seal remains are present.

Seal takes must be reported to NMFS through both oral and written notification. NMFS must be notified via telephone by the close of business on the next day following the discovery of any marine mammal or marine mammal parts. Written notification to NMFS must be made within 30 days and must include the results of any examinations conducted by qualified members of the Marine Mammal Stranding Network as well as any other information relating to the take.

National Environmental Policy Act

NMFS issued an Environmental Assessment (EA) in 1998, in conjunction with the notice of proposed authorization. As a result of the findings made in the EA, NMFS concluded that implementation of either the preferred alternative or other identified alternatives would not have a significant impact on the human environment. Therefore, preparation of an environmental impact statement on these actions was not required by Section 102(2) of the National Environmental Policy Act or its implementing regulations. Copies of the 1998 EA and the Finding of No Significant Impact are available upon request (see **ADDRESSES**).

Determinations

NMFS has determined (see 64 FR 28114, May 25, 1999) that the taking of up to 20 harbor seals and 4 of any combination of gray, harp, and hooded seals, annually from July 1, 1999, through June 30, 2004, will have no more than a negligible impact (as defined in 50 CFR 216.3) on these stocks of marine mammals. The best scientific information available indicates that since 1981, the Western North Atlantic harbor seal stock has had an average annual rate of increase of 4.2 percent (Waring *et al.*, 2000). In addition, the Western North Atlantic stocks of gray, harp, and hooded seals also appear to be increasing in abundance (Waring *et al.*, 1999, 2000). The small number of takes at Seabrook Station relative to current population estimates is unlikely to reduce the rate of population growth for any of these pinniped stocks.

According to North Atlantic reports received in NMFS' Northeast Region, no seals have been entrapped since the installation of Seal Deterrent Barriers in August 1999.

Authorization

In recognition of the timely receipt and acceptance of the reports required under 50 CFR 216.135 and a determination that the mitigation measures required pursuant to 50 CFR 216.134 and the LOA have been undertaken, NMFS issued an LOA to the North Atlantic Energy Services Corporation on June 26, 2001, for the taking of harbor seals, gray seals, harp seals, and hooded seals incidental to routine operations of the Seabrook Station nuclear power plant, provided the mitigation, monitoring, and reporting requirements described in 50 CFR 216.134 through 135 and in the LOA are undertaken.

Dated: December 20, 2001.

David Cottingham

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–32238 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121701C]

Endangered and Threatened Species; Amendment of Permit # 1291

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an amended application for a scientific research permit (1291); Request for comments.

SUMMARY: Notice is hereby given that NMFS has received an amended application for an ESA section 10(a)(1)(A) scientific research permit from the U.S. Geological Survey at Cook, WA (USGS).

DATES: Written comments on the amended permit application must be received no later than 5pm Pacific standard time on February 1, 2002.

ADDRESSES: Written comments on the application should be sent to Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments may also be sent via fax to 503–230–5435. Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: For permit 1291: Robert Koch, Portland, OR (ph: 503-230-5424, Fax: 503–230–5435, e-mail: robert.koch@noaa.gov).

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following species and evolutionary significant units (ESU's) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened lower Columbia River (LCR).

Steelhead (*O. mykiss):* threatened LCR.

Amended Application Received

Notice was published on February 21, 2001 (66 FR 11002) that the Columbia River Research Laboratory, USGS applied for a 5–year scientific research permit (1291) for annual takes of ESA-listed salmon and steelhead juveniles associated with a scientific research project at John Day, The Dalles, and Bonneville Dams on the lower Columbia River in the Pacific Northwest. The purpose of the research is to monitor juvenile fish movement, distribution, behavior, and survival from John Day Dam downstream past Bonneville Dam using radiotelemetry technology. The research will benefit ESA-listed fish species by providing information on spill effectiveness, forebay residence times, and guidance efficiency under various flow regimes that will allow Federal resource managers to make adjustments to bypass/collection structures to optimize downriver migrant survival at the hydropower projects. NMFS has received an amended application from USGS to include annual takes of juvenile, threatened, LCR chinook salmon and juvenile, threatened, LCR steelhead associated with the fish sampling at Bonneville Dam. ESA-listed salmon and steelhead juveniles are proposed to be obtained by Smolt Monitoring Program personnel at Bonneville Dam, handled, and released or implanted with radio transmitters, transported, held for as long as 24 hours, released, and tracked electronically. Smolt Monitoring Program personnel are authorized to collect ESA-listed juvenile fish under a separate take authorization. Based on the above average spawning success this year, the estimates of total out-migrants for LCR chinook and LCR steelhead are expected to exceed 300,000 juveniles. The indirect mortalities of 162 ESA-listed juvenile salmon and 11 steelhead juveniles associated with the research will not impede recovery of the species. In fact, it should assist in recovery planning by providing information on how juveniles migrate through hydropower systems.

Dated: December 21, 2001.

Phil Williams,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–32241 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121701B]

Permits; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of periodic need for break-bulk refrigerated cargo vessels.

SUMMARY: NMFS publishes for public review and comment information provided by U.S. joint venture (JV) partners regarding their need for break-bulk refrigerated cargo vessels to support approved foreign fishing operations in the U.S. Exclusive Economic Zone (EEZ).

ADDRESSES: Comments may be submitted to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2276.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson-Stevens Act), any person may submit an application requesting a permit authorizing a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the EEZ or, with the concurrence of a State, within the boundaries of that State, to a point outside the United States.

This notice concerns the fact that potential U.S. JV partners have reported that they will need to have a number of break-bulk refrigerated cargo vessels permitted under section 204(d) of the Magnuson-Stevens Act to support approved foreign fishing operations in the EEZ. The JV partners have reported that arrangements for such support vessels must generally be made on short notice immediately prior to the need for transport services. The U.S. JV partners have also reported that they are not aware of the availability of any U.S.-flag

break-bulk refrigerated cargo vessels and that it will therefore be necessary for them to employ foreign break-bulk refrigerated cargo vessels to support their operations.

In the interest of expediting the issuance of required permits and in accordance with section 204 (d)(3) of the Magnuson-Stevens Act, the U.S. JV partners have requested and received from the New England Fishery Management Council and the Mid-Atlantic Fishery Management Council, a general recommendation that any break-bulk refrigerated cargo vessels required to support approved foreign fishing operations in the EEZ be permitted under section 204 (d) of the Magnuson-Stevens Act.

In accordance with section 204 (d)(3)(D) of the Magnuson-Stevens Act, NMFS is notifying interested parties of the periodic need of the U.S. JV partners for break-bulk refrigerated cargo vessels to transship processed fishery products at-sea and transport the products to points outside the United States. Further information about the requirements of the U.S. JV partners is available from NMFS (See **ADDRESSES**). Owners or operators of vessels of the United States who purport to have vessels with adequate capacity to perform the required transportation at fair and reasonable rates should indicate their interest in doing so to NMFS (See **ADDRESSES**).

In consideration of the Councils' recommendation, the apparent lack of available U.S.-flag break-bulk refrigerated cargo vessels (as reported by the U.S. JV partners), and the requirement to process and issue on short notice permits requested in accordance with section 204 (d) of the Magnuson-Stevens Act, until an owner or operator of a vessel of the United States having adequate capacity to perform the required transportation at fair and reasonable rates is identified, NMFS intends to approve as expeditiously as possible all complete applications for 204 (d) transshipment permits submitted by U.S. JV partners in support of approved foreign fishing operations in the EEZ.

Dated: December 21, 2001.

Jonathan M. Kurland,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–32240 Filed 12–31–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 1, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren.Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 26, 2001.

John Tressler,

Leader, Regulatory Information Management Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for Grants Under the Minority Science and Engineering Improvement Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 200

Burden Hours: 8,000

Abstract: This Minority Science and Engineering Improvement Program application is designed to effect long-range improvement where enrollments are predominantly Alaska Native, American Indian, Blacks (not of Hispanic origin), Hispanics (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islanders or any combination of these.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–32158 Filed 12–31–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 1, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren.Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 26, 2001.

John Tressler,

Leader, Regulatory Information Management Office of the Chief Information Officer.

Student Financial Assistance

Type of Review: Extension.

Title: Lender's Application for Payment of Insurance Claim.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 1,804

Burden Hours: 487

Abstract: The ED Form 1207—Lender's Application for Payment of Insurance Claim is completed for each borrower for whom the lender is filing a Federal claim. Lenders must file for payment within 90 days of the default, depending on the type of claim filed.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the Internet address *OCIO.RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–32159 Filed 12–31–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–035]

ANR Pipeline Company; Notice of Negotiated Rate Filing

December 26, 2001.

Take notice that on December 17, 2001, ANR Pipeline Company (ANR) tendered for filing and approval a Service Agreement between ANR and Duke Energy Fuels, L.P., pursuant to ANR's Rate Schedule FTS–1, and a related Negotiated Rate Letter Agreement. ANR requests that the Commission accept and approve the agreements to be effective December 15, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32190 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–8–001]

Metro Energy, L.L.C.; Notice of Filing

December 26, 2001.

Take notice that on December 14, 2001, Metro Energy, L.L.C. (Metro Energy), filed with the Federal Energy Regulatory Commission (Commission) an amendment to an application pursuant to section 203 of the Federal Power Act (16 U.S.C. 842b) and part 33 of the Commission's Regulations, originally filed on October 18, 2001 (Application). The Commission granted the authorizations requested in the Application by letter order dated November 16, 2001.

The purpose of this amendment is to reflect a change in one of the conditions stated in the Application and the Letter Order. The change, which affects the manner in which Metro Energy satisfies the regulation prong of the public interest test under Section 203 of the Federal Power Act and Section 33.2(g) of the Commission's Regulations, is that Metro Energy will not cancel its market-based rate tariff, and wishes to have the option to continue its authorization to operate as a wholesale power marketer after the transfer of ownership of the Project to the County.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to

determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: January 9, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32181 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3075–003]

Michigan Electric Transmission Company; Notice of Filing

December 26, 2001.

Take notice that on December 12, 2001, Michigan Electric Transmission Company (METC) tendered for filing the following tariff sheets as part of its FERC Electric Tariff, Original Volume No. 1 in compliance with the November 14, 2001 order issued in this proceeding. (The sheets make up the entirety of METC's pro forma Generator Interconnection Agreement, Tariff Sheets 125–168.)

Original Sheet Nos. 126A, 127A, 129A, 130A, 132A, 134A, 136A, 138, 141A, 143A, 146A, 150A, 152A, 154A, 155A and 159A, First Revised Sheet Nos. 125 through 135, 135A, 141, 142, 146 through 153, 153A, 155 through 166, Sub First Revised Sheet Nos. 139, 139A, 143 and 144, Second Revised Sheet Nos. 136 and 137, Second Sub Revised Sheet No. 137, Second Sub First Revised Sheet Nos. 140, 145, 154, 167 and 168, and Second Sub Original Sheet No. 145A.

The sheets are to become effective on September 19, 2001. Copies of the filing were served upon the Michigan Public Service Commission and upon those on the official service list in this proceeding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link.

Comment Date: January 4, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32182 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–137–000, ER00–2998–001, ER00–2999–001, ER00–3000–001, and ER00–3001–001]

Mohawk River Funding III, L.L.C.; Notice of Issuance of Order

December 26, 2001.

Mohawk River Funding III, L.L.C. (Mohawk River) filed with the Commission, in the above-docketed proceedings, a long-term purchase power agreement under which Mohawk River will sell wholesale electric power and energy at market-based rates to USGen New England, Inc. directly, at various delivery points in the New England Power Pool. Mohawk River also requested certain waivers and authorizations. In particular, Mohawk River requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Mohawk River. On December 18, 2001, the Commission issued an order that accepted Mohawk River's application for sales of power and energy at market-based rates (Order).

The Commission's December 18, 2001 Order granted Mohawk River's request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Mohawk River should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Mohawk River is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Mohawk River, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Mohawk River's issuances of securities or assumptions of liabilities....

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 17, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32183 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–581–000]

New England Power Pool; Notice of Filing

December 26, 2001.

Take notice that on December 21, 2001, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials (1) to implement alternative payment and financial assurance arrangements with Enron power Marketing, Inc. (EPMI), Enron energy Marketing Corp. (EEMC), and Enron Eneergy Service, Inc. (EESI) with respect to transactions occurring on and after December 21, 2001 and (2) to terminate immediately and automatically the participation by EPMI, EEMC and EESI, as the case may be, as members in NEPOOL should there be a failure to make a required payment under the filed arrangements. Those arrangements are defined in a term sheet that will be reflected in definitive Standstill Agreements which NEPOOL states will be submitted to the Commission. A December 21, 2001 effective date was requested for the arrangements.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOOL.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link.

Comment Date: January 4, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32184 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–194–009]

Niagara Mohawk Power Corporation; Notice of Filing

December 26, 2001.

Take notice that on December 12, 2001, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an amendment to its July 10, 2001 Compliance Filing in the above docket to supply additional information requested by the Federal Energy Regulatory Commission (Commission) in its November 7, 2001 letter Order in the above referenced proceeding.

Copies of the filing have been served on all parties listed on the official service list maintained by the Commission for this proceeding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link.

Comment Date: January 4, 2002.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32185 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–4–000]

Northwest Pipeline Corporation; Notice of Site Visit

December 26, 2001.

On January 8–10, 2002, the staff of the Office of Energy Projects (OEP) will conduct a site visit of Northwest Pipeline Corporation's (NWP) Evergreen Pipeline Project in Skagit, King, Pierce, Whatcom, Snohomish, and Lewis Counties, Washington. The site visit will start at the following dates and locations:

January 8—Sedro-Woolley Loop. Meet outside of 3-Rivers Inn Restaurant, 211 Central Ave, Sedro-Woolley, WA at 10:45 a.m.

January 9—Mt. Vernon Loop. Meet outside of 3-Rivers Inn Restaurant, 211 Central Ave, Sedro-Woolley, WA at 8 a.m.

January 10—Auburn Loop. Meet in Pepper Tree Inn Lobby, 401 8th Street S.W., Auburn, WA at 8 a.m.

Covington Loop. Meet at the Timberlane Homeowners Association, 26612–192 Ave, S.E., Covington, WA at 12:15 p.m.

Representatives of NWP will accompany the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation. For schedule changes and updates, contact the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Sectretary.

[FR Doc. 01–32180 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–230–002, *et al.*]

Alliant Energy Corporate Services, Inc., *et al.*; Electric Rate and Corporate Regulation Filings

December 21, 2001.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Alliant Energy Corporate Services, Inc.

[Docket No. ER99–230–002]

Take notice that on December 18, 2001, Alliant Energy Corporate Services, Inc., submitted to the Federal Energy Regulatory Commission (Commission) an updated market power analysis.

Comment date: January 8, 2002.

2. Progress Genco Ventures, LLC

[Docket No. ER01–2929–000 and ER01–2929–001]

Take notice that on November 30, 2002, Progress Genco Ventures, LLC tendered for filing a notice of withdrawal of its application for authorization to sell capacity, energy and ancillary services at market-based rates, filed on August 24, 2001, as amended on November 2, 2001, in the above-referenced docket.

Comment date: January 11, 2002.

3. Cinergy Services, Inc.

[Docket No. ER02–177–001]

Take notice that on December 14, 2001, Cinergy Services, Inc. (Services), The Cincinnati Gas & Electric Company (CG&E), PSI Energy, Inc. (PSI), and Cinergy Power Investments, Inc. (CPI) (collectively Applicants) filed with the Federal Energy Regulatory Commission (Commission) an Application for Various Approvals Under Section 205 of the FPA. This filing is a supplement to a larger package of interrelated filings and associated settlements in which Applicants requested Commission action by December 31, 2001.

Comment date: January 4, 2002.

4. Virginia Electric and Power Company

[Docket No. ER02–559–000]

Take notice that on December 17, 2001, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing with the Federal Energy Regulatory Commission (Commission) the following Service Agreements with Sempra Energy Trading Corporation (Transmission Customer):

1. Fifth Amended Service Agreement for Firm Point-to-Point Transmission Service designated Seventh Revised Service Agreement No. 253 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

2. Fifth Amended Service Agreement for Non-Firm Point-to-Point Transmission Service designated Seventh Revised Service Agreement No. 49 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Company's Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreements, Dominion Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff. The Company requests an effective date of November 15, 2001, the date the customer first requested service.

Copies of the filing were served upon Sempra Energy Trading Corporation, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: January 7, 2002.

5. Exelon Generation Company, LLC

[Docket No. ER02–560–000]

Take notice that on December 17, 2001, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and Bryan Texas Utilities, under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2.

Comment date: January 8, 2002.

6. Pacific Gas and Electric Company

[Docket No. ER02–561–000]

Take notice that on December 18, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing a Generator Special Facilities Agreement (GSFA) and a Generator Interconnection Agreement (GIA) between PG&E and GWF Energy LLC (GWF) (collectively Parties).

The GSFA permits PG&E to recover the ongoing costs associated with owning, operating and maintaining the Special Facilities. As detailed in the Special Facilities Agreement, PG&E proposes to charge GWF a monthly Cost of Ownership Charge equal to the rates for transmission-level, customer-financed facilities in PG&E's currently effective Electric Rule 2, as filed with the California Public Utilities Commission (CPUC). PG&E's currently effective rate of 0.31% for transmission-level, customer-financed Special Facilities is contained in the CPUC's Advice Letter 1960–G/1587–E, effective August 5, 1996, a copy of which is included as Attachment 3 of this filing. PG&E has requested certain waivers.

Copies of this filing have been served upon GWF, the California Independent System Operator Corporation and the CPUC.

Comment date: January 8, 2002.

7. Reliant Energy Osceola, LLC

[Docket No. ER02–473–000 and ER02–473–001]

Take notice that on December 4, 2001, Reliant Energy Osceola, LLC (Reliant Osceola) in Docket No. ER02–473–000 as amended on December 12, 2001 in Docket No. ER02–473–001 tendered for filing a Power Purchase Agreement between reliant Osceola and Seminole Electric Cooperative, Inc. (Seminole) as a customer under reliant Osceola's market-based tariff.

Reliant Osceola requests and effective date of December 1, 2001.

Comment date: January 2, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32179 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3074–002, et al.]

San Diego Gas & Electric Company, et al.; Electric Rate and Corporate Regulation Filings

December 26 2001.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in

accordance with Standard Paragraph E at the end of this notice.

1. San Diego Gas & Electric Company

[Docket No. ER01–3074–002]

Take notice that on December 6, 2001, San Diego Gas & Electric Company (SDG&E) tendered for filing documentation that support project costs and explains its use of an annual fix charge to calculate transmission revenues.

Comment date: January 7, 2002.

2. Entergy Nuclear Vermont Yankee, LLC

[Docket No. ER02–564–000]

Take notice that on December 19, 2001, Entergy Nuclear Vermont Yankee, LLC (Entergy Nuclear VY) tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act. Entergy Nuclear VY also tendered for filing a long-term power purchase agreement between Entergy Nuclear VY and Vermont Yankee Nuclear Power Corporation (VYNPC) for acceptance as a service agreement under Entergy Nuclear VY's proposed market-based rate tariff.

Copies of this filing were served upon VYNPC, the Vermont Public Service Board, the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Mississippi Public Service Commission, the Council of the City of New Orleans and the Texas Public Utility Commission.

Comment date: January 11, 2002.

3. Duke Energy Enterprise, LLC

[Docket No. ER02–565–000]

Take notice that on December 19, 2001, Duke Energy Enterprise, LLC (Duke Enterprise) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Enterprise seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Enterprise also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Duke Enterprise requests pursuant to Section 35.11 of the Commission's regulations that the Commission waive the 60-day minimum notice requirement under Section 35.3(a) of its regulations and grant an effective date for this application of February 14, 2002, the date on which Duke Enterprise anticipates commencing the sale of test energy.

Comment date: January 11, 2002.

4. Meriden Gas Turbines LLC

[Docket No. ER02–566–000]

On December 19, 2001, Meriden Gas Turbines LLC (Meriden) filed, under section 205 of the Federal Power Act (FPA), an application requesting that the Commission (1) Accept for filing its proposed market-based FERC Rate Schedule No. 1; (2) grant blanket authority to make market-based wholesale sales of capacity and energy under the FERC Rate Schedule No. 1; (3) grant authority to sell ancillary services at market-based rates within ISO New England Inc., New York Independent System Operator, Inc., and PJM Interconnection, L.L.C.; and (4) grant such waivers and blanket authorizations as the Commission has granted in the past to other nonfranchised entities with market-based rate authority.

Comment date: January 11, 2002.

5. Consumers Energy Company

[Docket No. ER02–567–000]

Take notice that on December 19, 2001, Consumers Energy Company (Consumers) tendered for filing a Service Agreement with Duke Power, a division of Duke Energy Corporation, (Customer) under Consumers FERC Electric Tariff No. 9 for Market Based Sales. Consumers requested that the Agreement be allowed to become effective as of December 13, 2001.

Copies of the filing were served upon the Customer and the Michigan Public Service Commission.

Comment date: January 11, 2002.

6. Canal Electric Company

[Docket No. ER02–568–000]

Take notice that on December 20, 2001, Canal Electric Company tendered for filing the Eighth Amendment to the Power Contract between Canal Electric Company and Commonwealth Electric Company and Cambridge Electric Light Company, as well as revised tariff sheets to implement the Eighth Amendment, for effectiveness on January 1, 2002. The Eighth Amendment modifies the schedule of nuclear decommissioning expenses to reflect the schedule approved by the New Hampshire Nuclear decommissioning Financing Committee in its Final Report and Order issuedNovember 5, 2001.

Comment date: January 11, 2002.

7. New England Power Pool

[Docket No. ER02–569–000]

Take notice that on December 20, 2001, the New England Power Pool (NEPOOL) Participants Committee submitted the Eighty-First Agreement Amending New England Power Pool Agreement (the Eighty-First Agreement), which proposes to restate the existing Financial Assurance Policy for NEPOOL Members, which is Attachment L to the NEPOOL Tariff, and the Financial Assurance Policy for NEPOOL Non-Participant Transmission Customers, which is Attachment M to the NEPOOL Tariff. The Eighty-First Agreement also proposes minor, clarifying changes to Section 21.2(d) of the Restated NEPOOL Agreement. A January 21, 2002 effective date is requested for the revised Restated NEPOOL Agreement and NEPOOL Tariff sheets reflecting the changes proposed by the Eighty-First Agreement.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment date: January 11, 2002.

8. Allegheny Energy Service Corporationon behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER02–570–000]

Take notice that on December 20, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Service Agreement No. 152 to add one (1) new Customer to the Market Rate tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply requests a waiver of notice requirements for an effective date of December 1, 2001 for service to Morgan Stanley Capital Group, Inc. Confidential treatment of information in the Service Agreement has been requested. Copies of the filing have been provided to the customer.

Comment date: January 11, 2002.

9. RAMCO, Inc.

[Docket No. ER02–571–000]

Take notice that on December 19, 2001, RAMCO, Inc. (RAMCO) tendered for filing two service agreements for power sales with the California Independent System Operator for sales by RAMCO to the CAISO at market-based rates according to its FERC Electric Tariff, Original Volume No. 1.

Comment date: January 11, 2002.

10. Mountain View Power Partners, LLC

[Docket No. ER02–572–000]

Take notice that on December 19, 2001, Mountain View Power Partners, LLC (Mountain View) filed a Master Agreement (the Master Agreement) and a Confirmation

entered into thereunder (collectively, the ''Agreement'') for power sales with its affiliate, PG&E Energy Trading-Power, L.P. (PGET) as required by the Commission in its letter Order of February 9, 2001. See Mountain View Power Partners, LLC, Docket No. ER01–1336–000 (delegated letter order issued February 9, 2001) (Section 205 Letter Order). The Agreement commits Mountain View to sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff, Original Volume No. 1.

Comment date: January 11, 2002.

11. Mountain View Power Partners II, LLC

[Docket No. ER02–573–000]

Take notice that on December 19, 2001, Mountain View Power Partners II, LLC (Mountain View II) filed a Master Agreement (the Master Agreement) and a Confirmation entered into thereunder (collectively, the Agreement) for power sales with its affiliate, PG&E Energy Trading-Power, L.P. (PGET) as required by the Commission in its letter Order of April 16, 2001. Mountain View Power Partners II, LLC, Docket No. ER01–1336–000 (delegated letter order issued April 16, 2001) (Section 205 Letter Order). The Agreement commits Mountain View II to sell capacity, energy and ancillary services to PGET at market-based rates according to its FERC Electric Tariff, Original Volume No. 1.

Comment date: January 11, 2002.

12. Michigan Electric Transmission Company

[Docket No. ER02–574–000]

Take notice that on December 19, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Service Agreements for services associated with Network Integration Transmission Service with Sebewaing Light & Water Department and Thumb Electric Cooperative and for Firm and/or Non-Firm Point-to-Point Transmission Service with participants listed on the Commission's Service List.

Comment date: January 9, 2002.

13. American Electric Power Service Corporation

[Docket No. ER02–575–000]

Take notice that on December 19, 2001, American Electric Power Service Corporation (AEPSC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of Service Agreement No. 296 between AEPSC as agent for Indiana Michigan Power Company and Duke Energy Berrien, L.L.C. under American Electric Power Operating Companies' Open Access Transmission Tariff (OATT) pursuant to Section 35.15 of the Commission's regulations.

AEPSC requests an effective date of February 17, 2002 for the cancellation.

AEPSC served copies of the filing upon Duke Energy Berrien, L.L.C. c/o Duke Energy North America, LLC.

Comment date: January 9, 2002.

14. Appalachian Power Company

[Docket No. ER02–576–000]

Take notice that on December 19, 2001, Appalachian Power Company tendered for filing a Letter Agreement with Mirant Danville, L.L.C.

AEP requests an effective date of February 17, 2002.

Copies of Appalachian Power Company's filing have been served upon the Virginia State Corporation Commission.

Comment date: January 9, 2002.

15. Appalachian Power Company

[Docket No. ER02–577–000]

Take notice that on December 19, 2001, Appalachian Power Company tendered for filing a Letter Agreement with Allegheny Energy Supply Company, L.L.C.

AEP requests an effective date of February 17, 2002.

Copies of Appalachian Power Company's filing have been served upon the Virginia State Corporation Commission.

Comment date: January 9, 2002.

16. Carolina Power & Light Company

[Docket No. ER02–578–000]

Take notice that on December 19, 2001, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement between CP&L and the following eligible buyer, Oglethorpe Power Corporation. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 5.

CP&L requests an effective date of December 3, 2001 for this Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: January 9, 2002.

17. Capital District Energy Center Cogeneration Associates

[Docket No. ER02–579–000]

Take notice that on December 19, 2001, Capital District Energy Center Cogeneration Associates (CDECCA), filed with the Federal Energy Regulatory Commission (Commission) an application for approval of its initial tariff (FERC Electric Tariff Original Volume No. 1), and for blanket approval for market-based rates pursuant to Part 35 of the Commission's regulations.

CDECCA is a general partnership that owns and operates a 56-MW generating plant located in Hartford, Connecticut.

Comment date: January 11, 2002.

18. Pawtucket Power Associates Limited Partnership

[Docket No. ER02–580–000]

Take notice that on December 19, 2001, Pawtucket Power Associates Limited Partnership (Pawtucket), filed with the Federal Energy Regulatory Commission an application for approval of its initial tariff (FERC Electric Tariff Original Volume No. 1), and for blanket approval for market-based rates pursuant to Part 35 of the Commission's regulations.

Pawtucket is a limited partnership formed under the laws of Massachusetts. Pawtucket owns and operates a 68-MW generating plant located in Pawtucket, Rhode Island.

Comment date: January 9, 2002.

19. Fitchburg Gas and Electric Light Company

[Docket No. ER02–582–000]

Take notice that on December 19, 2001, Fitchburg Gas and Electric Light Company (Fitchburg) filed a service agreement with New Hampshire Electric Cooperative, Inc. for service under Fitchburg's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2463–000. Fitchburg requests an effective date of November 28, 2001.

Comment date: January 9, 2002.

20. Duke Energy Southaven, LLC

[Docket No. ER02–583–000]

Take notice that on December 20, 2001, Duke Energy Southaven, LLC (Duke Southaven) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Southaven seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Southaven also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Duke Southaven requests pursuant to Section 35.11 of the Commission's regulations that the Commission waive

the 60-day minimum notice requirement under Section 35.3(a) of its regulations and grant an effective date of February 18, 2002, the date on which Duke Southaven anticipates commencing the sale of test energy.

Comment date: January 10, 2002.

21. Wisconsin Public Service Corporation

[Docket No. ER02–584–000]

Take notice that on December 20, 2001, Wisconsin Public Service Corporation (WPSC), a subsidiary of WPS Resources Corp. (WPSR) on behalf of itself and Upper Peninsula Power Company (UPPCo), also a WPSR subsidiary (collectively the Operating Companies) tendered for filing Notices of Cancellation of Service Agreement Nos. 18, 19, 99 and 100. The service agreements are transmission service agreements with El Paso Merchant Energy, L.P. (El Paso) under WPS Resources Operating Companies' open Access Transmission Tariff. In conformity with Order No. 614 WPSC also tenders service agreement cover sheets that show that the service agreements have been canceled.

WPSC respectfully requests that the Commission accept its filing and allow the cancellation to become effective as of December 21, 2001.

Copies of the filing were served upon El Paso, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: January 10, 2002.

22. Pacific Gas and Electric Company

[Docket No. ER02–585–000]

Take notice that on December 20, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing a Notice of Cancellation of the PG&E First Revised Rate Schedule FERC No. 210 (Reliability Must-Run Service Agreement between Pacific Gas and Electric Company and the California Independent System Operator Corporation for Kings River Power Plant).

Copies of this filing have been served upon the California Independent System Operator Corporation (ISO) and the California Public Utilities Commission.

Comment date: January 10, 2002.

23. Public Service Company of New Mexico

[Docket No. ER02–586–000]

Take notice that on December 20, 2001, Public Service Company of New Mexico (PNM) submitted for filing an executed service agreement with the Valley Electric Association, Inc. dated December 17, 2001, for electric power and energy sales at negotiated rates under the terms of PNM's Power and Energy Sales Tariff. PNM has requested an effective date of December 6, 2001 for the agreement. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to the Valley Electric Association, Inc. and to the New Mexico Public Regulation Commission.

Comment date: January 10, 2002.

24. Dominion Nuclear Marketing II, Inc.

[Docket No. ER02–587–000]

Take notice that on December 20, 2001, Dominion Nuclear Marketing II, Inc. (the Company), respectfully tendered for filing the following Service Agreement by Dominion Nuclear Marketing II, Inc. to Allegheny Energy Supply Company, LLC, designated as Service Agreement No. 4, under the Company's FERC Market-Based Sales Tariff, Original Volume No. 1, effective on November 24, 2000. A copy of the filing was served upon Allegheny Energy Supply Company, LLC, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

The Company requests an effective date of November 30, 2001, as requested by the customer.

Comment date: January 10, 2002.

25. Dominion Nuclear Marketing II, Inc.

[Docket No. ER02–588–000]

Take notice that on December 20, 2001, Dominion Nuclear Marketing II, Inc. (the Company) respectfully tendered for filing the following Service Agreement by Dominion Nuclear Marketing II, Inc. to Connecticut Municipal Electric Energy Cooperative, designated as Service Agreement No. 5, under the Company's FERC Market-Based Sales Tariff, Original Volume No. 1, effective on November 24, 2000.

The Company requests an effective date of December 11, 2001, as requested by the customer.

A copy of the filing was served upon Connecticut Municipal Electric Energy Cooperative, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: January 10, 2002.

26. Duke Energy Enterprise, LLC

[Docket No. EG02–55–000]

Take notice that on December 29, 2001, Duke Energy Enterprise, LLC (Duke Enterprise) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Duke Enterprise is a Delaware limited liability company that will be engaged directly and exclusively in the business of operating all or part of one or more eligible facilities to be located in Clarke County, Mississippi. The eligible facilities will consist of a simple cycle electric generation plant with a nominal capacity of 640 MW and related interconnection facilities. The output of the eligible facilities will be sold at wholesale.

Comment date: January 16, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

27. Meriden Gas Turbines LLC

[Docket No. EG02–56–000]

Take notice that on December 19, 2001, Meriden Gas Turbines LLC (Meriden) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935 (PUHCA) and Part 365 of the Commission's regulations.

As more fully explained in the application, Meriden is a limited liability company that will be engaged either directly or indirectly and exclusively in the business of owning and operating an electric generation facility located in Connecticut.

Comment date: January 16, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

28. MPX Termoceará Ltda.

[Docket No. EG02–57–000]

Take notice that on December 19, 2001, MPX Termoceará Ltda. (Applicant), Rua Dom Luis 500, sala 1925, Fortaleza, Ceará, Brazil filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a 49%-owned subsidiary of MDU Resources Group, Inc. Applicant will own and operate a simple cycle natural gas-fired power generation plant with a nominal 200 MW gross capacity (the Facility). All of the capacity and energy available from the Facility will be sold at wholesale.

Comment date: January 16, 2002 The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32178 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11588–001 Alaska]

Alaska Power & Telephone Company; Notice of Availability of Draft Environmental Assessment

December 26, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application for an original license for Alaska Power and Telephone Company's proposed Otter Creek Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA). The proposed project would be located on Kasidaya Creek, at Taiya Inlet, 3 miles south of the City of Skagway, and 12 miles southwest of the City of Haines, Alaska. The proposed project would occupy approximately 6.0 acres of land within the Tongass National Forest, administered by the U.S. Forest Service.

This DEA contains the Commission staff's analysis of the potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. This filing may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (please call (202) 208–2222 for assistance).

Any comments to this DEA should be filed within *45* days from the date of this notice and should be addressed to Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For further information, contact Gaylord Hoisington, Project Coordinator, at (202) 219–2756.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32188 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2659–011 Oregon]

PacifiCorp; Notice of Availability of Final Environmental Assessment

December 26, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Powerdale Hydroelectric Project, located on the Hood River in Hood River County, Oregon, and has prepared a Final Environmental Assessment (FEA) for the project. There are no federal lands within the project boundaries although a portion of the project is located in the Columbia River Gorge National Scenic Area.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is on file with the Commission and is available for public inspection. The FEA may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

For further information, contact Bob Easton at (202) 219–2782.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32187 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms, Conditions, and Prescriptions

December 26, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2142–031.

c. *Date filed:* December 28, 1999.

d. *Applicant:* FPL Energy Maine Hydro LLC.

e. *Name of Project:* Indian Pond Hydroelectric Project.

f. *Location:* On the Kennebec River, near the town of The Forks, Somerset and Piscataquis counties, Maine. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Robert C. Richter III, Senior Environmental Coordinator; FPL Energy Maine Hydro, LLC; 100 Middle Street; Portland, ME 04101; (207) 771–3536.

i. *FERC Contact:* Jarrad Kosa, FERC Project Coordinator, at (202) 219–2831 or via e-mail at *jarrad.kosa@ferc.fed.us.*

j. Deadline for filing comments, recommendations, terms, conditions, and prescriptions: 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, recommendations, terms, conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

l. *Description of the Project:* The proposed peaking project consists of the following existing facilities: (1) A 2,000-foot-long dam, consisting of (a) a 270-foot-long, 175-foot-high concrete section, (b) a 200-foot-long attached powerhouse section, and (c) an earthen section in excess of 1,500 feet in length; (2) four steel penstocks ranging from 6 feet to 24 feet in diameter; (3) a concrete powerhouse containing four generating units, having a total rated hydraulic capacity of 7,140 cubic feet per second and installed generation capacity of 76.4 megawatts (4) a 3,746-acre impoundment varying in width from 0.9 to 1.5 miles, extending about 9 miles upstream, that has a usable storage capacity of 850 million cubic feet; and (5) appurtenant facilities. The applicant estimates the total average annual generation would be approximately 202 million kilowatt hours.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms, conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms, conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32186 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

December 21, 2001.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Exempt

1. Project No. 11495–000: 12–10–01, Kenneth D. Thomas
2. Project Nos. 2699–001 and 2019–017: 12–10–01, Carol Gleichman
3. Project No. 11563–002: 12–10–01, Carol Gleichman
4. RP00–241–000: 12–11–01, Office of Clerk/U.S. House of Representatives
5. CP01–415–000: 12–13–01 Medha Kochlar
6. CP01–176–000 and CP01–179–000: 12–13–01, Ray Hellwig
7. P–2342–011: 12–13–01, Loree Randall
8. CP01–76–000, CP01–77–000, RP01–217–000, and CP01–156–000: 12–18–01, Chris Zerby

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–32189 Filed 12–31–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7123–7]

Notice of Deficiency for Clean Air Operating Permits Program in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority under section 502(i) of the Clean Air Act and the implementing regulations at 40 CFR 70.10(b)(1), EPA is publishing this notice of deficiency for the State of Washington's (Washington or State) Clean Air Act title V operating permits program, which is administered by two State agencies and seven local air pollution control authorities. The notice of deficiency is based upon EPA's finding that Washington's provisions for insignificant emissions units do not meet minimum Federal requirements for program approval. Publication of this notice is a prerequisite for withdrawal of Washington's title V program approval, but does not effect such withdrawal.

EFFECTIVE DATE: December 14, 2001. Because this Notice of Deficiency is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Denise Baker, EPA, Region 10, Office of Air Quality (OAQ–107), 1200 6th Avenue, Seattle, WA 98101, (206) 553–8087.

I. Description of Action

EPA is publishing a notice of deficiency for the Clean Air Act (CAA or Act) title V operating permits program for the State of Washington. This document is being published to satisfy 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a title V permitting authority is not adequately administering or enforcing its title V operating permits program. The deficiency that is the subject of this notice relates to Washington's requirements for insignificant emissions units (IEUs) and applies to all State and local permitting authorities that implement Washington's title V program.

A. Approval of Washington's Title V Program

The CAA requires all State and local permitting authorities to develop operating permits programs that meet the requirements of title V of the Act, 42 U.S.C. 7661–7661f, and its implementing regulations, 40 CFR part 70. Washington's operating permits program was submitted in response to this directive. EPA granted interim approval to Washington's air operating permits program on November 9, 1994 (59 FR 55813). EPA repromulgated final interim approval of Washington's operating permits program on one issue, along with a notice of correction, on December 8, 1995 (60 FR 62992).

Washington's title V operating permits program is implemented by the Washington Department of Ecology (Ecology), the Washington Energy Facility Site Evaluation Commission (EFSEC), and seven local air pollution control authorities: the Benton County Clean Air Authority (BCCAA); the Northwest Air Pollution Authority (NWAPA); the Olympic Air Pollution Control Authority (OAPCA); the Puget Sound Clean Air Agency (PSCAA); the Spokane County Air Pollution Control Authority (SCAPCA); the Southwest Clean Air Agency (SWCAA); and the Yakima Regional Clean Air Authority (YRCAA). After these State and local agencies revised their operating permits programs to address the conditions of the interim approval, EPA promulgated final full approval of Washington's title V operating permits program on August 13, 2001 (66 FR 42439).

B. Additional Public Comment Process on Title V Programs

On December 11, 2000 (65 FR 77376), EPA published a **Federal Register** notice notifying the public of the opportunity to submit comments identifying any programmatic or implementation deficiencies in State title V programs that had received interim or full approval. Pursuant to the settlement agreement discussed in that notice, EPA committed to respond to the merits of any such claims of deficiency on or before December 1, 2001, for those States, such as Washington, that had received interim approval. On March 12, 2001, EPA received comments from Smith & Lowney, PLLC, on behalf of pacific Air Improvement Resource, Waste Action Project, Washington Toxics Coalition, and the Washington Environmental Council (the commenters). The commenters identified numerous alleged deficiencies in the title V operating permits programs administered by all Washington permitting authorities.

After thoroughly reviewing all issues raised by the commenters, EPA identified one area where EPA believes that Washington's regulations do not meet the requirements of title V and part 70—Washington's exemption of ''insignificant emission units'' from certain permit content requirements. Accordingly, EPA is issuing this notice of deficiency. In a separate document, EPA has responded to the other issues raised by the commenters, which EPA does not believe constitute deficiencies in Washington's operating permits program at this time.

C. Exemption of IEUs From Permit Content Requirements

Part 70 authorizes EPA to approve as part of a State program a list of insignificant activities and emission levels (IEUs) which need not be included in the permit application, provided that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the EPA-approved schedule. *See* 40 CFR 70.5(c). Nothing in part 70, however, authorizes a State to exempt IEUs from the testing, monitoring, recordkeeping, reporting, or compliance certification requirements of 40 CFR 70.6.

Washington's regulations contain criteria for identifying IEUs. *See* WAC 173–401–200(16), –530, –532, and –533. Sources that are subject to a Federally-enforceable requirement other than a requirement of the State Implementation Plan that applies generally to all sources in Washington (a so-called ''generally applicable requirement'') are not deemed ''insignificant'' under Washington's program even if they otherwise qualify under one of the five lists. *See* WAC 173–401–530(2)(a). Washington's regulations also expressly state that no permit application can omit information necessary to determine the applicability of, or to impose any applicable requirement. *See* WAC 173–401–510(1). In addition, WAC 173–401–530(1) and (2)(b) provide that designation of an emission unit as an IEU does not exempt the unit from any applicable requirements and that the permit must contain all applicable requirements that apply to IEUs. The Washington program, however, specifically exempts IEUs from testing, monitoring, recordkeeping, and reporting requirements except where such requirements are specifically imposed in the applicable requirement itself. *See* WAC 173–401–530(2)(c). The Washington program also exempts IEUs from compliance certification requirements. *See* WAC 173–401–530(2)(d).

Because EPA does not believe that part 70 exempts IEUs from the testing, monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6, EPA initially determined that Ecology must revise its IEU regulations as a condition of full approval. *See* 60 FR at 62993–62997 (final interim approval of Washington's operating permits program based on exemption of IEUs from certain permit content requirements); 60 FR 50166 (September 28, 1995) (proposed interim approval of

Washington's operating permits program on same basis). The Western States Petroleum Association (WSPA), together with several other companies and the Washington Department of Ecology, challenged EPA's determination that Ecology must revise its IEU regulations as a condition of full approval. *See* 66 FR at 19. On June 17, 1996, the Ninth Circuit found in favor of the petitioners. *WSPA* v. *EPA*, 87 F.3d 280 (9th Cir. 1996). The Ninth Circuit did not opine on whether EPA's position was consistent with part 70. It did, however, find that EPA had acted inconsistently in its title V approvals, and had failed to explain the departure from precedent that the Court perceived in the Washington interim approval. The Court then remanded the matter to EPA, instructing EPA to give full approval to Washington's IEU regulations.

In light of the Court's order in the WSPA case, EPA determined that it must give full approval to Washington's IEU regulations. Therefore, on August 13, 2001, EPA published a **Federal Register** notice granting final full approval to Washington's title V program notwithstanding what EPA believed to be a deficiency in its IEU regulations. 66 FR 42439–42440 (August 13, 2001). Nonetheless, as EPA stated in its final full approval of Washington's program, EPA maintained its position that part 70 does not allow the exemption of IEUs subject to generally applicable requirements from the testing, monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6 and intended to issue a notice of deficiency in another rulemaking action if the deficiencies in Washington's IEU regulations were not promptly addressed.

Since issuance of the Court's order in WSPA case, EPA has carefully reviewed the IEU provisions of those eight title V programs identified by the Court as inconsistent with EPA's decision on Washington's regulations. EPA has determined that three of the title V programs identified by the WSPA Court (Massachusetts; North Dakota; Knox County, Tennessee) are in fact consistent with EPA's position that insignificant sources subject to applicable requirements may not be exempt from permit content requirements. *See* 61 FR 39338 (July 29, 1996). North Carolina, Florida, and Jefferson County, Kentucky have made revisions to their IEU provisions. EPA has approved the changes made by North Carolina and Florida. 65 FR 38744, 38745 (June 22, 2000) (Forsyth County, North Carolina); 66 FR 45941 (August 31, 2001) (all other North Carolina permitting authorities); 66 FR 49837 (October 1, 2001) (Florida). EPA has not yet taken action on the changes made by Jefferson County, Kentucky. EPA has notified Ohio and Hawaii that their provisions for IEUs do not conform to the requirements of part 70 and must be revised. If Ohio and Hawaii do not revise their provisions for IEUs to conform to part 70, EPA intends to issue notices of deficiencies to these permitting authorities in accordance with the time frames set forth in the December 11, 2000 **Federal Register** notice soliciting comments on title V program deficiencies. *See* 65 FR 77376. Having addressed the inconsistencies identified by the Ninth Circuit when it ordered EPA to approve Washington's IEU provisions, EPA is now notifying Washington that it must bring its IEU provisions into alignment with the requirements of part 70 and other State and local title V programs or face withdrawal of its title V operating permits program.

Because WAC 173–401–530(2)(c) and (d), the regulations that exempt IEUs from certain permit content requirements, apply throughout the State of Washington, this notice of deficiency applies to all State and local agencies that implement Washington's operating permits program. As discussed above, those agencies include Ecology, EFSEC, BCCAA, NWAPA, OAPCA, PSCAA, SCAPCA, SWACAA, and YRCAA.

D. Effect of Notice of Deficiency

Part 70 provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(c)(1). This section goes on to list a number of potential bases for program withdrawal, including the case where the permitting authority's legal authority no longer meets the requirements of part 70. 40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the document be published in the **Federal Register**. Today's document satisfies this requirement and constitutes a finding of program deficiency. If the permitting authority has not taken ''significant action to assure adequate administration and enforcement of the program'' within 90 days after publication of a notice of deficiency, EPA may withdraw the State program, apply any of the sanctions specified in section 179(b) of the Act, or promulgate, administer, and enforce a Federal title V program. 40 CFR 70.10(b)(2). Section 70.10(b)(3) provides that if a State has not corrected the deficiency within 18 months of the finding of deficiency, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. Upon EPA action, the sanctions will go into effect unless the State has corrected the deficiencies identified in this document within 18 months after signature of this document.[1] In addition, section 70.10(b)(4) provides that, if the State has not corrected the deficiency within 18 months after the date of notice of deficiency, EPA must promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw Washington's title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days, at which point it will determine whether Washington has taken significant action to correct the deficiency.

II. Administrative Requirements

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of today's action may be filed in the United States Court of Appeals for the appropriate circuit within 60 days of January 2, 2002.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 14, 2001.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 01–32103 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00439M; FRL–6818–1]

Pesticide Program Dialogue Committee;Committee and Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

[1] EPA is developing an Order of Sanctions rule to determine which sanction applies at the end of this 18 month period.

SUMMARY: As required by the Federal Advisory Committee Act, 5 U.S.C., App. 2 section 9(c), EPA's Office of Pesticide Programs (OPP) is giving notice of the renewal of the Pesticide Program Dialogue Committee (PPDC) and its Charter and the appointment of new members.

DATES: The PPDC Charter, which was filed with Congress on November 9, 2001, will be in effect for 2 years, until November 9, 2003.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach (7501C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–4775 or (703) 305–7093; fax number: (703) 308–4776; e-mail address: Fehrenbach.Margie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, it may be of interest to persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act; the Federal Food, Drug, and Cosmetic Act; and the amendments to both of these major pesticide laws by the Food Quality Protection Act (Public Law 104–170) of 1996. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about PPDC, go directly to the Home Page for EPA's Office of Pesticide Programs at http://www.epa.gov/pesticides/ppdc.

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–00439M. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the Pesticide Program Dialogue Committee (PPDC). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How Can I Participate in PPDC Meetings?

PPDC meetings and workshops will be open to the public under section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463. Outside statements by observers will be welcome. Oral statements will be limited to 3–5 minutes, and it is preferred that only one person per organization present the statement. Any person who wishes to file a written statement may do so before or after the meeting. These statements will become part of the permanent record and will be available for public inspection at the address in Unit II.2.

II. Background

The PPDC is composed of 42 members appointed by the EPA Deputy Administrator. Committee members were selected from a balanced group of participants from the following sectors: Pesticide users, grower and commodity groups; industry and trade associations; environmental/public interest and farmworker groups; Federal, State and tribal governments; public health organizations; animal welfare; and academia. PPDC was established to provide a public forum to discuss a wide variety of pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science policy issues associated with evaluating and reducing risks from use of pesticides.

List of Subjects

Environmental protection, Agriculture, Chemicals, Drinking water, Foods, Pesticides, Pests.

Dated: December 21, 2001.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 01–32214 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7124–1]

Peer Review of EPA Draft Human Health and Ecological Risk Assessment of Perchlorate

AGENCY: Environmental Protection Agency.

ACTION: Notice of Peer Review Workshop and public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Office of Research and Development is announcing an external peer review workshop to review the revised draft document entitled, ''Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization'' (NCEA–I–0503). The EPA is also announcing a public comment period for this draft document. The workshop is being organized and convened by the Eastern Research Group, Inc. (ERG), an EPA contractor.

DATES: The two-day peer review workshop will begin on Tuesday, March 5, 2002, at 9 a.m. and will end on Wednesday, March 6, 2002, at 4:30 p.m. The 30-day public review and comment period will begin January 9, 2002, and will end February 11, 2002.

ADDRESSES: The external peer review meeting will be held at a facility in Sacramento, California. To attend the meeting as an observer, please register with ERG via the Internet by visiting *www.meetings@erg.com.* You may also register by calling ERG's conference registration line at 781–674–7374 or by faxing a registration request to 781–674–2906. Upon registering, you will be sent an agenda and a logistical fact sheet containing information on the meeting site, overnight accommodations, and ground transportation. The deadline for pre-registration is February 25, 2002. Space is limited, and reservations will be accepted on a first-come, first-served basis. There will be a limited time for oral comments on the revised draft document during the meeting. When registering, please let ERG know if you

wish to make a brief statement not to exceed five minutes.

Document Availability: The external review draft of the perchlorate document will be available by January 9, 2002, on EPA's National Center for Environmental Assessment (NCEA) Web site at *http://www.epa.gov/ncea.* In addition, a compact disk (CD) containing documents cited in the ''Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization'' report that cannot be readily obtained from the open literature will be available by request as of January 9, 2002. To obtain a copy of the CD, you may contact the EPA Superfund Records Center in San Francisco, California. A shipping and handling fee may apply. The circulation desk phone number for the Superfund Records Center is 415–536–2000. Copies of the perchlorate document and CD are not available from ERG.

Comment Submission: Written comments should be submitted to ERG, Inc., 110 Hartwell Avenue, Lexington, Massachusetts 02421. Comments under 50 pages may be sent via e-mail attachment (in Word, Word Perfect, or PDF) to *www.meetings@erg.com.* Written comments must be postmarked by the end of the public comment period (February 11, 2002). Please note that all technical comments received in response to this notice will be placed in a public record. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: Questions regarding registration and logistics should be directed to EPA's contractor, ERG, Inc., at 781–674–7374. For technical inquiries, please contact: Annie Jarabek, U.S. Environmental Protection Agency (MD 52), USEPA Mailroom, Research Triangle Park, NC 27711; telephone 919–541–4847; facsimile 919–541–1818; *e-mail jarabek.annie@epa.gov.*

SUPPLEMENTARY INFORMATION: Perchlorate (ClO_4) is an anion that originates as a contaminant in groundwater and surface waters from the dissolution of ammonium, potassium, magnesium, or sodium salts. Perchlorate is exceedingly mobile in aqueous systems and can persist for many decades under typical groundwater and surface water conditions. A major source of perchlorate contamination is the manufacture of ammonium perchlorate for use as the oxidizer component and primary ingredient in solid propellant for rockets, missiles, and fireworks.

EPA's Superfund Technical Support Center issued a provisional reference dose (RfD) for perchlorate in 1992 and a revised provisional RfD in 1995 based on the effects of potassium perchlorate in patients with Graves' disease (an autoimmune disease that results in hyperthyroidism). (An RfD is an estimate of a daily oral human exposure that is anticipated to be without adverse noncancer health effects over a lifetime.) In March 1997, the existing toxicologic database on perchlorate was determined to be inadequate for quantitative human health risk assessment by an external peer review panel. A lack of data on the ecotoxicological effects was also noted. In May 1997, a testing strategy was developed based on the known mode-of-action for perchlorate toxicity (the inhibition of iodide uptake in the thyroid and subsequent perturbations of thyroid hormone homeostasis), and an accelerated research program was initiated to gain a better understanding of the human health effects of perchlorate, examine possible ecological impacts, refine analytical methods, develop treatment technologies, and better characterize the occurrence of perchlorate in groundwater and surface waters.

In December 1998, the National Center for Environmental Assessment (NCEA) developed an external peer review draft document that assessed the human health and ecological risk of perchlorate (''Perchlorate Environmental Contamination: Toxicology Review and Risk Characterization Based on Emerging Information,'' NCEA–I–0503). This document presented an updated human health risk assessment that incorporated results of the newly performed health effects studies available as of November 1998 and a screening-level ecological assessment. The human health risk assessment model utilized a mode-of-action approach that harmonized noncancer and cancer approaches to derive a single oral risk benchmark based on precursor effects for both neurodevelopmental and thyroid neoplasia. A workshop was convened in February 1999 in San Bernardino, California, to provide external peer review of that document. Peer reviewers endorsed the conceptual approach proposed by NCEA, but recommended that new analyses be conducted and that several additional studies be planned and performed. NCEA has prepared a revised perchlorate assessment that addresses comments from the 1999 external peer review workshop and incorporates data from additional studies that were either nearing completion at the time of the 1999 review or were recommended at that time. This revised draft document is the subject of the external peer review workshop announced in today's **Federal Register** notice.

The external peer review panel will consist of a panel of independent scientists selected by EPA's contractor, ERG, from the fields of developmental toxicology, reproductive toxicology, neurotoxicology, immunotoxicology, pharmacokinetics, genetic toxicology, endocrinology, pathology, epidemiology, statistics, ecotoxicology, and environmental transport and biotransformation. Peer reviewers will review the revised human health and ecological risk assessment for perchlorate as well as new studies performed since the 1999 external peer review. Following the external peer review workshop, ERG will prepare a report summarizing the workshop. EPA will address the comments of the external peer reviewers in finalizing the perchlorate risk assessment document and in developing revised toxicity values. The human health and ecological risk assessment may be used in the future to support development of a health advisory or possible drinking water regulations and cleanup decisions at hazardous waste sites. However, any such future decisions would be subject to all applicable statutory and regulatory requirements and policy considerations for use of the assessments under those programs.

Dated: December 20, 2001.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 01–32088 Filed 12–31–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

December 19, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control

number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 1, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0519.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CC Docket No. 92–06).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 30,000.

Estimated Time Per Response: 31.2 hours per response (avg.).

Frequency of Response: Recordkeeping requirement, third party disclosure requirement, on occasion reporting requirement.

Total Annual Burden: 936,000 hours.

Total Annual Cost: N/A.

Needs and Uses: Parts 64 and 68 of the Commission's rules contain procedures for avoiding unwanted telephone solicitations to residences, and to regulate the use of automatic telephone dialing systems, artificial or pre-recorded voice messages, and telephone facsimile machines. The Commission believes that the recordkeeping requirement is the best means of preventing unwanted telephone solicitations.

OMB Control No.: 3060–0837.

Title: Application for DTV Broadcast Station License.

Form No.: FCC Form 302–DTV.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 600.

Estimated Time Per Response: 1.5–6 hours per response (avg.).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 950 hours.

Total Annual Cost: $245,000.

Needs and Uses: FCC Form 302–DTV is used by licensees and permittees of DTV broadcast stations to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit and to ensure that any changes to the station's authorized facilities, made without prior Commission approval, will not have any impact on other stations and the public. Data is extracted from FCC 302–DTV for inclusion in the license to operate the station.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–32249 Filed 12–31–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Policy Statement Regarding Minority-Owned Depository Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Policy statement.

SUMMARY: The FDIC is proposing to revise its Policy Statement Regarding Minority-Owned Depository Institutions. Section 308 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (''FIRREA'') requires the Secretary of the Treasury to consult with the Director of the Office of Thrift Supervision and the Chairperson of the Board of Directors of the FDIC to determine the best methods for preserving and encouraging minority ownership of depository institutions. The FDIC has long recognized the unique role and importance of minority-owned depository institutions and has historically taken steps to preserve and encourage minority ownership of financial institutions. The revised Policy Statement updates, expands, and clarifies the agency's policies and procedures related to minority-owned institutions.

DATES: Written comments must be received on or before March 4, 2002.

ADDRESSES: All comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (fax number (202) 898–3838; Internet address: *comments@fdic.gov*). Comments may be posted on the FDIC Internet site at *http://www.fdic.gov/regulations/laws/federal/propose.html* and may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Brett A. McCallister, Risk Management and Applications Section, Division of Supervision (202) 898–3803 or Grovetta N. Gardineer, Counsel, Legal Division, (202) 898–3728, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On April 3, 1990, the Board of Directors of the FDIC adopted a Policy Statement on Encouragement and Preservation of Minority Ownership of Financial Institutions. The framework for the original Policy Statement resulted from several key provisions contained in Section 308 of FIRREA, which enumerated several goals as follows: (1) Preserving the number of minority depository institutions; (2) preserving the minority character in cases of merger or acquisition; (3) providing technical assistance to prevent insolvency of institutions not now insolvent; (4) promoting and encouraging creation of new minority depository institutions; and (5) providing for training, technical assistance, and education programs.

The original Policy Statement provided guidance to the industry regarding the agency's efforts in achieving the goals of Section 308. The revised Policy Statement attempts to provide a more structured framework that sets forth initiatives of the FDIC to promote the preservation of, as well as to provide technical assistance, training and educational programs to, minority-owned institutions by working with

those institutions, their trade associations and the other federal financial regulatory agencies.

Section 308(b) of FIRREA provides that ''minority'' means any Black American, Native American, Hispanic American or Asian American. The FDIC adopts this definition of minority in the revised Policy Statement. Section 308(b) of FIRREA defines the term ''minority depository institution'' as: any depository institution that—(A) If a privately owned institution, 51 percent is owned by one or more socially and economically disadvantaged individuals; (B) if publicly owned, 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals; and (C) in the case of a mutual institution where the majority of the Board of Directors, account holders, and the community which it services is predominantly minority. The revised Policy Statement defines the term ''minority-owned institution'' as any Federally insured depository institution where 51 percent or more of the voting stock is owned by minority individuals. Additionally mutual, publicly traded, and widely held institutions will be considered minority-owned if a majority of the Board of Directors, account holders, and the community which the institution serves are predominantly minority, regardless of non-minority or non-U.S. citizen ownership of the capital stock. The proposed Policy Statement also clarifies that the FDIC's program is targeted at institutions owned by U.S. citizens, and ownership by non-U.S. citizens is not counted in determining minority-owned status. The FDIC invites the public to comment on the proposed definition of ''minority-owned institution''. The FDIC specifically seeks comment on the proposed treatment of mutual, publicly traded and widely held institutions, as to the feasibility of collecting information regarding the account holders and the community in making a determination regarding its status as a minority-owned institution.

The proposed Policy Statement also provides for the FDIC to maintain a list of minority-owned institutions to ensure that all eligible minority-owned depository institutions are able to participate in the program. If not already identified as minority-owned, an institution can be added to the list by self-certifying that the institution meets the above definition. FDIC examiners will review the accuracy of the list during regular examinations, and case managers will incorporate any changes due to mergers, acquisitions, and changes in control. The FDIC will also work with the other Federal regulatory agencies to make certain that the minority-owned institutions that they supervise are included on the list. The revised Policy Statement makes it clear, however, that inclusion on the list is voluntary and any institution that does not want to be included will be removed from the official list. The FDIC invites comments on this approach to compile a list of minority-owned institutions.

The revised Policy Statement also proposes to designate a national coordinator for the FDIC's minority-owned institution program. The national coordinator will be located at the FDIC's Washington, DC headquarters. That person will act as a liaison between the Division of Supervision and officials from the Division of Compliance and Consumer Affairs, the Office of Diversity and Economic Opportunity and the Division of Resolutions and Receiverships and the other federal financial regulators. The national coordinator will regularly contact the various minority-owned institution trade associations to obtain feedback on the FDIC's efforts under the program. The national coordinator will be responsible for contacting the other Federal financial regulatory agencies to discuss their outreach efforts and to identify opportunities for the agencies to work together to assist minority-owned institutions. The national coordinator will also guide subject matter experts in each of the FDIC's eight regional offices who will oversee their region's efforts under the program. The FDIC believes that the more formalized structure within the Division of Supervision will facilitate more meaningful and helpful communications between the FDIC and minority-owned institutions since these employees will be available to answer questions or provide assistance on issues presented by minority-owned institutions. The FDIC specifically seeks comment on this proposed organizational structure.

The revised Policy Statement also discusses the types of technical assistance that will be provided by the FDIC to minority-owned institutions. The Policy Statement sets forth examples of ways that FDIC staff will be able to provide assistance to minority-owned institutions while making it clear that staff will not perform duties and tasks reserved for management of a minority-owned institution. In addition to being available to answer questions and provide guidance to a minority-owned institution, the FDIC is also proposing to have staff return to any minority-owned institution approximately 90 to 120 days after the conclusion of an examination to review any areas of concern identified during the examination or any issues of particular interest to the institution. The minority-owned institution may accept or decline this offer of assistance. The FDIC invites comments on the scope of technical assistance that would be provided by the FDIC and the optional return visit at the conclusion of an examination of a minority-owned institution.

The revised Policy Statement also proposes that the FDIC work with trade associations representing minority-owned institutions, as well as other regulatory agencies, to discuss and provide for training opportunities for minority-owned institutions. The proposed Policy Statement provides that the FDIC will partner with certain trade associations to offer training programs during their annual conferences and regional meetings. The FDIC solicits comments on other methods to identify and provide training and educational programs that would be beneficial to minority-owned institutions.

The revised Policy Statement also discusses the issue of failing institutions. The revised Policy Statement states that the Division of Resolutions and Receiverships is the appropriate division in the FDIC to deal with issues regarding failing institutions. While the original Policy Statement provided for certain preferences to be given to minority-owned institutions in the resolution of failed institutions pursuant to Sections 13(k) and 13(f)(12) of the FDI Act, the revised Policy Statement takes into account both the decision of the United States Supreme Court in *Adarand Constructors, Inc.* v. *Pena,* 115 S. Ct. 2097 (1995) and the statutory requirement under Section 13(c)(4) enacted in 1991 that failed institutions be resolved in a manner that results in the least cost to the insurance fund. The *Adarand* decision held that federal affirmative action programs that use racial and ethnic criteria as a basis for decisionmaking are subject to strict judicial scrutiny. The decision set forth a two-prong test to determine whether federally administered affirmative action programs are constitutional. The first prong of the test requires the government to demonstrate a compelling interest in remedying past or persistent continuing or lingering discrimination against minorities and the second prong requires that any remedy be narrowly tailored to cure a specific identified problem. While *Adarand* was a contracts case, the strict scrutiny standard of review will apply whenever the federal government voluntarily adopts a racial or ethnic

classification as a basis for decisionmaking. As a result, this ruling has had a significant impact on the FDIC's ability to give preference to minority institutions in a resolutions context. In October of 2001, the U.S. Supreme Court heard another case involving Adarand Constructors. While the FDIC had hoped to gain additional guidance on what actions may be permissible regarding the minority preference statutes, the Supreme Court declined to render a decision in the case citing procedural problems with the case that prevented the Court from addressing the merits of the affirmative action complaint.

Additionally, the least-cost resolution requirement also significantly reduced the ability of the FDIC to give preference to minority institutions in the resolution of failed institutions. However, the Division of Resolutions and Receiverships will work with the Division of Supervision and the Office of Diversity and Economic Opportunity to ensure that all qualified minority institutions and individuals that have expressed an interest in acquiring a minority-owned institution are notified of any potential failure. The FDIC invites the public to comment on the methodology to be used to ensure that all qualified minority-owned institutions will be made aware of situations involving the failure of a minority-owned institution.

To ensure that the regional coordinators are meeting the goals associated with the revised Policy Statement, the proposed Policy Statement requires them to provide quarterly reports to the national coordinator on their region's activities relating to minority-owned institutions. The national coordinator, in turn, will compile the results of the eight regional reports and provide a quarterly summary to the Office of the Chairman. The FDIC's Annual Report will also contain information relating to the agency's efforts to promote and preserve minority-owned financial institutions. The proposed Policy Statement also provides for the FDIC to create a Webpage on its Internet site (*www.fdic.gov*) to promote the minority-owned institution program. It is anticipated that the Webpage will describe the program, contain information regarding the national coordinator and the regional coordinators and provide links to the list of minority-owned institutions, their trade associations and other programs that specifically affect minority-owned institutions. The FDIC invites the public to comment on the types of information that would be helpful and beneficial to include on the agency's Web page regarding the minority-owned institution program.

The text of the proposed Policy Statement follows:

Federal Deposit Insurance Corporation

Policy Statement Regarding Minority-Owned Depository Institutions

Minority-owned depository institutions often promote the economic viability of minority and under-served communities. The FDIC has long recognized the importance of minority-owned institutions and has historically taken steps to preserve and encourage minority ownership of insured financial institutions.

Statutory Framework

In August 1989, Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA''). Section 308 of FIRREA established the following goals:

- Preserve the number of minority-owned depository institutions;
- Preserve the minority character in cases of merger or acquisition;
- Provide technical assistance to prevent insolvency of institutions not now insolvent;
- Promote and encourage creation of new minority-owned depository institutions; and
- Provide for training, technical assistance, and educational programs.

Definition

''Minority'' as defined by Section 308 of FIRREA means any Black American, Asian American, Hispanic American, or Native American. For the purposes of this Policy Statement, the term ''minority-owned institution'' means any Federally insured depository institution where 51 percent or more of the voting stock is owned by minority individuals. This includes institutions collectively owned by a group of minority individuals, such as a Native American Tribe. However, ownership by non-U.S. citizens will not be counted in determining minority-owned status. Mutual, publicly traded, and widely held institutions will be considered minority-owned if a majority of the Board of Directors, account holders, and the community which the institution serves are predominantly minority, regardless of non-minority or non-U.S. citizen ownership.

Identification of Minority-Owned Institutions

To ensure that all minority-owned depository institutions are able to participate in the program, the FDIC will maintain a list of federally insured minority-owned institutions. Institutions that are not already identified as minority-owned by the FDIC can request to be designated as such by certifying that they meet the above definition. For institutions supervised directly by the FDIC, our examiners will review the accuracy of the list during the examination process. In addition, case managers in our regional offices will note changes to the list while processing deposit insurance applications, merger applications, change of control notices, or failures of minority-owned institutions. The FDIC will work closely with the other Federal regulatory agencies to ensure that institutions not directly supervised by the FDIC are accurately captured on our list. In addition, the FDIC will periodically provide the list to relevant trade associations and seek input regarding its accuracy. Inclusion in the FDIC's minority-owned institution program is voluntary. Any minority-owned institution not wishing to participate in this program will be removed from the official list upon request.

Organizational Structure

The Division of Supervision has designated a national coordinator for the FDIC's minority-owned institutions program in the Washington Office and a regional coordinator in each Regional Office. The national coordinator will consult with officials from the Division of Compliance and Consumer Affairs, the Office of Diversity and Economic Opportunity, the Legal Division, and the Division of Resolutions and Receiverships to ensure appropriate personnel are involved in program initiatives. The national coordinator will regularly contact the various minority-owned institution trade associations to seek feedback on the FDIC's efforts under this program, discuss possible training initiatives, and explore options for preserving and promoting minority ownership of depository institutions. As the primary Federal regulator for State nonmember banks, the FDIC will focus its efforts on these institutions. However, the national coordinator will meet with the other Federal regulators periodically to discuss each agency's outreach efforts, to share ideas, and to identify opportunities where the agencies can work together to assist minority-owned institutions. Representatives of other divisions and offices may participate in these meetings.

The regional coordinators are knowledgeable about minority-owned bank issues and are available to answer questions or to direct inquiries to the

appropriate office. However, each FDIC insured institution has previously been assigned a specific case manager in their regional office who will continue to be the institution's central point of contact at the FDIC. At least annually, regional coordinators will contact each minority-owned, State nonmember bank in their respective regions to discuss the FDIC's efforts to promote and preserve minority ownership of financial institutions and will offer to have a member of regional management meet with the institution's board of directors to discuss issues of interest. Finally, the regional coordinators will contact all new minority-owned State nonmember banks identified through insurance applications, merger applications, or change in control notices to familiarize the institutions with the FDIC's minority-owned institution program.

Technical Assistance

The FDIC can provide technical assistance to minority-owned institutions in several ways on a variety of issues. An institution can contact its case manager for assistance in understanding bank regulations, FDIC policies, examination procedures, etc. Case managers can also explain the application process and the type of analysis and information required for different applications. During examinations, examiners are expected to fully explain any supervisory recommendations and should offer to help management understand satisfactory methods to address such recommendations.

At the conclusion of each examination of a minority-owned institution directly supervised by the FDIC, the FDIC will offer to have representatives return to the institution approximately 90 to 120 days later to review areas of concern or topics of interest to the institution. The purpose of the return visit will be to provide technical assistance, not to identify new problems. The level of technical assistance provided should be commensurate with the issues facing the institution, but FDIC employees will not perform tasks expected of an institution's management or employees. For example, FDIC employees may explain Call Report instructions as they relate to specific accounts, but will not assist in the preparation of an institution's Call Report. As another example, FDIC employees may provide information on community reinvestment opportunities, but will not participate in a specific transaction.

Training and Educational Programs

The FDIC will work with trade associations representing minority-owned institutions and other regulatory agencies to periodically assess the need for, and provide for, training opportunities and educational opportunities. We will partner with the trade associations to offer training programs during their annual conferences and other regional meetings.

Failing Institutions

In the event of a potential failure of a minority-owned institution, the Division of Resolutions and Receiverships will contact all minority-owned institutions nationwide that qualify to bid on failing institutions. The Division of Resolutions and Receiverships will solicit qualified minority-owned institutions' interest in the failing institution, discuss the bidding process, and upon request, offer to provide technical assistance regarding completion of the bid forms. In addition, the Division of Resolutions and Receiverships, with assistance from the Office of Diversity and Economic Opportunity, will maintain a list of minority individuals and nonbank entities that have expressed an interest in acquiring failing minority-owned institutions. Trade associations that represent minority-owned institutions (the National Bankers Association, the American League of Financial Institutions, and the North American Native Bankers Association) will also be contacted periodically to help identify possible interested parties.

Reporting

The regional coordinators will report their region's activities related to this Policy Statement to the national coordinator quarterly. The national coordinator will compile the results of the regional offices' reports and submit a quarterly summary to the Office of the Chairman. Our efforts to preserve and promote minority ownership of depository institutions will also be highlighted in the FDIC's Annual Report.

Internet Site

The FDIC will create a Webpage on its Internet site (*www.fdic.gov*) to promote the minority-owned institution program. Among other things, the page will describe the program and include the name, phone number, and email address of the national coordinator and each regional coordinator. The page will also contain links to the list of minority-owned institutions, pertinent trade associations, and other regulatory agency programs. We will also explore the feasibility and usefulness of posting other items to the page, such as statistical information and comparative data for minority-owned institutions. Visitors will have the opportunity to provide feedback regarding the program on the Web page.

By order of the Board of Directors.

Dated at Washington, DC., this 20th day of December, 2001.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 01–32155 Filed 12–31–01; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 16, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. CoVest Bancshares, Inc. Employee Stock Ownership Plan Trust, James L. Roberts (Trustee), Paul A. Larsen (Trustee), and Barbara A. Buscemi (Trustee), all of Des Plaines, Illinois; to retain voting shares of CoVest Bancshares, Inc., and Covest Banc, National Association, both of Des Plaines, Illinois.

Board of Governors of the Federal Reserve System, December 26, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–32132 Filed 12–31–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 28, 2002.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. CRSB Bancorp, Inc., Delano, Minnesota; to become a bank holding company by acquiring 99.91 percent of the voting shares of Crow River State Bank, Delano, Minnesota.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. First York BanCorp, York, Nebraska; to acquire 100 percent of the voting shares of K.L. & D.M., Inc., Polk, Nebraska and thereby indirectly acquire Citizens State Bank, Polk, Nebraska.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. BNP Paribas, Paris, France, and BancWest Corporation, Honolulu, Hawaii; to acquire 100 percent of the voting shares of United California Bank, Los Angeles, California.

Board of Governors of the Federal Reserve System, December 26, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–32133 Filed 12–31–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, January 7, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1.Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 28, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–32256 Filed 12–28–01; 12:12 pm]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time: 10:30 a.m.

Date: January 15, 2002.

Place: 4th Floor, Conference Room, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C.

Status: Open.

Matters to Be Considered:

1. Approve minutes of the June 27, 2000, meeting.

2. Report of the Executive Director on Thrift Savings Plan status.

3. November 15, 2001-January 31, 2002, Thrift Savings Plan Open Season.

4. Legislation.

5. New TSP record keeping system.

6. New business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact Elizabeth S. Woodruff, Committee Management Officer, on (202) 942–1660.

Dated: December 27, 2001.

Elizabeth S. Woodruff,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 01–32252 Filed 12–28–01; 5:23 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality.

Time and Dates: 9 a.m.–5 p.m. January 24, 2002,
9 a.m.–1 p.m. January 25, 2002.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Background: The National Committee on Vital and Health Statistics is the statutory public advisory body to the Secretary of Health and Human Services in the area of health data, statistics, and health information policy. It is established by section 306(k) of the Public Health Service Act (42 U.S.C. 242k(k)), and its mandate includes advising the Secretary on the implementation of the Administrative Simplification provisions (Social Security Act, title XI, part C, 42 U.S.C. 1320d to 1320d–8) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104–191.

Its Subcommittee on Privacy and Confidentiality monitors developments in health information privacy and confidentiality on behalf of the full Committee and makes recommendations to the full Committee so that it can advise the Secretary on implementation of the health information privacy provisions of HIPAA.

Purpose: This meeting of the Subcommittee on Privacy and Confidentiality will receive information on the implementation of the regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164), promulgated under the Health Insurance Portability and Accountability Act of 1996.

The regulation and further information about it can be found on the Web site of the Office for Civil Rights, at *http://www.hhs.gov/ocr/hipaa/.* The regulation has been in effect since April 14, 2001. Most entities covered by the regulation must come into compliance by April 14, 2003, and many are beginning the process of implementing it.

The first day of the meeting will be conducted as a hearing, in which the Subcommittee will gather detailed information about implementation of the regulation's provisions for use and disclosure of health information for marketing and fundraising. The Subcommittee will invite specific representatives of affected groups, in order to obtain information about practical issues in implementation of the regulation with respect to these uses and disclosures of information, and to obtain suggestions about possible solutions for such issues.

The format will include one or more invited panels on these issues and time for questions and discussion. The Subcommittee will ask the invited witnesses for focused, detailed analyses and description, with examples, of the effect the regulation is expected to have, on individuals and on entities subject to the regulation, with respect to these matters, based on early implementation efforts and preliminary assessments of impact.

The second day of the meeting will consist of Subcommittee discussion of the testimony it has heard and deliberations about possible recommendations to the Secretary.

In addition to the panels that will be invited to address these issues, members of the public who would like to make a brief (3 minutes or less) oral comment on one or more of the specified issues during the hearing will be placed on the agenda as time permits. To be included on the agenda, please contact Marietta Squire (301) 458–4524, by E-mail at *mrawlinson@cdc.gov*, or postal address at NCHS, Presidential Building, Room 1100, 6525 Belcrest Road, Hyattsville, Maryland 20782 by January 17, 2002.

Persons wishing to submit written testimony only (which should not exceed five double-spaced typewritten pages) should endeavor to submit it by that date. Unfilled slots for oral testimony will also be filled on the day of the meeting as time permits. Please consult Ms. Squire for further information about these arrangements.

Additional information about the hearing will be provided on the NCVHS Web site at *http://www.ncvhs.hhs.gov* shorthy before the hearing date.

Contact Person for More Information: Information about the content of the hearing and matters to be considered may be obtained from John P. Fanning, Lead Staff Persons for the NCVHS Subcommittee on Privacy and Confidentiality, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, 440D Humphrey Building, 200 Independence Avenue SW., Washington DC 20201, telephone (202) 690–5896, E-mail *jfanning@osaspe.dhhs.gov.* or from Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information about the committee, including summaries of past meetings and a roster of committee members, is available on the Committee's Web site at *http://www.ncvhs.hhs.gov.*

Dated: December 20, 2001.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for, Planning and Evaluation.

[FR Doc. 01–32198 Filed 12–31–01; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Immunosuppressive Drugs Subcommittee of the Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Immunosuppressive Drugs Subcommittee of the Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 24, 2002, from 8:30 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: TurnerT@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will discuss new drug applications (NDAs) 21–083/SE1–006 and 21–110/SE1–004, RAPAMUNE (sirolimus) oral solution and tablets, Wyeth-Ayerst Research, approved for prophylaxis of organ rejection in patients receiving renal transplants. As stated in the approved labeling, it is recommended that RAPAMUNE be used in a regimen with cyclosporine and corticosteroids. The discussion is for the proposed elimination of cyclosporine from the immunosuppressive regimen 2 to 4 months after transplantation under certain conditions.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by January 16, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 16, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 19, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–32175 Filed 12–31–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 16, 2002, from 10 a.m. to 12:30 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact: William Freas, or Sheila D. Langford, Center for Biologics Evaluation and Research (CBER) (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 16, 2002, the committee will hear presentations relevant to the site visit report on the review of the research programs of the Laboratory of Bacterial, Parasitic, and Unconventional Agents, and the Laboratory of Molecular Virology, Division of Emerging and Transfusion Transmitted Diseases, Office of Blood Research and Review, CBER.

Procedure: On January 16, 2002, from 10:00 a.m. to 10:45 a.m., and from 11:30 a.m. to 12:30 p.m. the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 9, 2002. Oral presentations from the public will be scheduled between approximately 11:30 a.m. to 12:30 p.m. on January 16, 2002. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 9, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On January 16, 2002, from 10:45 a.m. to 11:30 a.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss the reports of the review of individual research programs in the Division of Emerging and Transfusion Transmitted Diseases, Office of Blood Research and Review, Center for Biologics Evaluation and Research.

FDA regrets that it was unable to publish this notice 15 days prior to the January 16, 2002, Blood Products Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Blood Products Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 26, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–32253 Filed 12–27–01; 5:02 pm]

BILLING CODE 4160–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: November 2001

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of November 2001, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services(other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
Program-Related Convictions	
Bilenkin, Elana ..... Old Bridge, NJ	12/20/2001
Birdsong, Stacie ..... Detroit, MI	12/20/2001
Bitz, Jennifer M ..... Jamestown, ND	12/20/2001
Boguslavskiy, Vadim ..... Lavenel, NJ	12/20/2001
Brown, Maurice Chevale ..... Sterling, CO	12/20/2001
Dallakyan, Naira M ..... Pasadena, CA	12/20/2001
Greer, J Randall ..... Memphis, TN	12/20/2001
Gutman, Marci ..... Miami, FL	12/20/2001
Maddox, Yolanda Gail ..... Troy, AL	12/20/2001
McDonald, Anita Fletcher ..... Palestine, TX	12/20/2001
New York Health Plan ..... New York, NY	12/20/2001
Norman, Brigid ..... Riverdale, GA	12/20/2001
Paulin, John Gregory ..... Florence, CO	12/20/2001
Rapp, Donna Lynn ..... Lakewood, CO	12/20/2001
Reyes, Gloria ..... Miami, FL	12/20/2001
Rose, Melba L ..... Miami, FL	12/20/2001
Scarpitta, Janet ..... Newark, NJ	12/20/2001
Stolyar, Yelena ..... Golden, CO	12/20/2001
Taylor, Shirley Jean ..... Pearl, MS	12/20/2001
Urban, Edward J ..... Chargin Fall, OH	12/20/2001
Felony Conviction for Health Care	
Brathwaite, Stephen Earl ..... W Valley City, UT	12/20/2001
Burstein, Donald A ..... Warminster, PA	12/20/2001
Casiano, Janet ..... Carle Place, NY	12/20/2001
Fergusson, Olantungie Clarence ..... Sherman Oaks, CA	12/20/2001
Oldham, Susan G ..... Lexington, KY	12/20/2001
Runk, Lisa D ..... Wichita, KS	12/20/2001
Seals, Carlos V ..... Los Angeles, CA	12/20/2001
Felony Control Substance Conviction	
Davis, Donna K Kidd ..... Somerset, KY	12/20/2001
Gleason, Laura Jane ..... Phoenix, AZ	12/20/2001
Hendrick, Vickie ..... Gallatin, TN	12/20/2001
McMenamin, Deborah J ..... Carbondale, PA	12/20/2001
Sommer, Deborah Jane ..... Dayton, TX	12/20/2001
Patient Abuse/Neglect Convictions	
Barsuk, Joseph Jr ..... Churchville, NY	12/20/2001
Boykins, Loretta Penny ..... Baltimore, MD	12/20/2001
Cathey, Deborah	12/20/2001

Subject city, state	Effective date
Nashville, TN	
Coleman, Tracy Lavonne Laurora, CO	12/20/2001
Conyers, Leonard E Wilmington, DE	12/20/2001
Dickinson, Sharon Lee Corunna, MI	12/20/2001
Ferdon, Michael Kevin Ontario, OR	12/20/2001
Kegel, Alan Wheeling, IL	12/20/2001
Lembong, Noky Herems Diamond Bar, CA	12/20/2001
Maxian, Therese M Binghamton, NY	12/20/2001
Pawlak, Patricia Barker, NY	12/20/2001
Quinones, Anel Garfield, NJ	12/20/2001
Risley, Charles S Saugerties, NY	12/20/2001
Stocker, Charles Edward Lancaster, OH	12/20/2001
Thompson, Robert J Raymond, MS	12/20/2001
Watson, Marlene Maria Bronx, NY	12/20/2001
Conviction for Health Care Fraud	
Plyter, Mark Williamson, NY	12/20/2001
License Revocation/Suspension/ Surrendered	
Amundson, Terri Sue Lawrenceville, GA	12/20/2001
Banda-Orman, Selina Des Moines, IA	12/20/2001
Barolin, Linda Mantua, NJ	12/20/2001
Bealer, Mildred Sitch Pottsville, PA	12/20/2001
Bell, Donna S Douglas, AK	12/20/2001
Bryant, Laurie L Davenport, IA	12/20/2001
Burgess, Marleen K Cresco, IA	12/20/2001
Carico, Paula J Kendallville, IN	12/20/2001
Cigelske, Michael Allen Phoenix, AZ	12/20/2001
Duffie, Brenda L Burlington, IA	12/20/2001
Dykes, Judy R Phoenix, AZ	12/20/2001
Garrett, Herman Alpha Norcross, GA	12/20/2001
Harple, Carol Weiler Gordonville, PA	12/20/2001
Hernandez, Stephen Louis Hudson, FL	12/20/2001
Heuberger, Sally Sheffield, IA	12/20/2001
Hummell, Alan Cocoa, FL	12/20/2001
Jewkes, Mindy Salt Lake City, UT	12/20/2001
Kadish, William A Shrewsbury, MA	12/20/2001
Larson, Richard Warren Cherokee Village, AR	12/20/2001
Leonard, Rhonda Lynn Tyler, TX	12/20/2001
Long, Jill Suzanne W Blocton, AL	12/20/2001
Lucero, Glen M Denver, CO	12/20/2001
McGraw, Daniel P Haverhill, MA	12/20/2001
Milam, Stephen Robert Cicero, IN	12/20/2001
Moore, Jerry Gayle Houston, TX	12/20/2001
Newman, William T Chapel Hill, NC	12/20/2001
Petanovich, E John Emlenton, PA	12/20/2001
Peyton, Bret W Iowa Falls, IA	12/20/2001
Porter, Mary Jo Norfolk, VA	12/20/2001
Rice, Cynthia M Phoenix, AZ	12/20/2001
Richardson, Lawrence John Los Angeles, CA	12/20/2001
Rollins, Jane Michigan City, IN	12/20/2001
Shellhase, Barbara J Cleona, PA	12/20/2001
Spencer, Craig A Frankfort, IL	12/20/2001
Sugden, Mark F Virginia Beach, VA	12/20/2001
Tabotabo, Armando M Keyport, NJ	12/20/2001
Vail, Sheree Behr Malvern, PA	12/20/2001
Wehby, Michael Daniel Fort Thomas, KY	12/20/2001
West, Malynda Susan San Francisco, CA	12/20/2001
Fraud/Kickbacks	
Rousseau, Andre M Chicago, IL	09/10/2001
Entities Owned/Controlled By Convicted	
Arroyo Chiropractic Arroyo Grande, CA	12/20/2001
Carlin Chiropractic Health Ctr San Antonio, TX	12/20/2001
Cosmetic Surgery & Laser Inst Tustin, CA	12/20/2001
Gregory W Stephens, D C, P C Houston, TX	12/20/2001
Lund Chiropractic Arlington, TX	12/20/2001
Martin Family Chiropractic Ctr Cameron Park, CA	12/20/2001
Y & L Corporation Denver, CO	12/20/2001
Default on Heal Loan	
Alams, Humphrey A Jr Seattle, WA	12/20/2001
Anillo-Sarmiento, Manuel F Miami, FL	12/20/2001
Baron, Spencer H N Miami Beach, FL	12/20/2001
Bell, Robert E Phoenix, AZ	12/20/2001
Bornstein, Mark L Pembroke Pines, FL	12/20/2001
Buckingham, Guy M Orleans, MI	12/20/2001
Dauphin, Michelle M Pembroke Pines, FL	12/20/2001
Dinozzi, Anthony D Batavia, OH	12/20/2001
Dupuis, Edward J Dallas, TX	12/20/2001
Evans, Charla J Mobile, AL	12/20/2001
Ferguson, Camilla M Fairborn, OH	12/20/2001
Fredericks, Duane A Philadelphia, PA	12/20/2001
Fryer, Thomas J Ferron, UT	12/20/2001
Gilyot, Glenn David Sr New Orleans, LA	12/20/2001
Hansen, Hunter J Andrews, NC	12/20/2001
Havriliak, Stephen J Huntingdon Valley, PA	12/20/2001
Huber, Mark Princeton, MN	12/20/2001
Kardelis, Eugene C Jr Nazareth, PA	12/20/2001
Kardos, William P Apollo, PA	12/20/2001
Knott, Kevin Thomas Jr Oceanside, CA	12/20/2001
Kron, Kathy A Norton, MA	12/20/2001
Lallouz, Solomon Y Hollywood, FL	12/20/2001
Lantz, Larry S Broomall, PA	12/20/2001
Leavitt, Albert M Jr Alexandria, VA	12/20/2001
Legault, Michelle A Coon Rapids, MN	12/20/2001
Leon, Maria I Hollywood, FL	12/20/2001
Levy, Richard S Forthee, NJ	12/20/2001
Milbourne, Michael W Lafayette Hill, PA	12/20/2001
Milot, Sheila Inez Vernon Hills, IL	12/20/2001
Moore, Charles E Kansas City, KS	12/20/2001
O'Brien, Matthew P Romeo, MI	12/20/2001
Parenti, Lisa C Nashville, TN	12/20/2001
Parker, Melissa M Clinton, NC	12/20/2001
Parsons, Tien M Marathon, FL	12/20/2001
Payne, Carrol D Memphis, TN	12/20/2001
Pitts, Angela R Odessa, FL	12/20/2001
Powell, Michael N Wollaston, MA	12/20/2001
Pugh, Melvoria C Mobile, AL	12/20/2001
Ray, Donald Elton Orange Beach, AL	12/20/2001
Richichi, Mark S Ctr Moriches, NY	12/20/2001
Roberts, Pamela Charlotte, NC	12/20/2001

Subject city, state	Effective date
Robinson, Cynane Ann Yetta ... Southfield, MI	12/20/2001
Rodebaugh, Cheryl Lynn ..... Denver, CO	12/20/2001
Rose, Keith D ..... Big Rapids, MI	12/20/2001
Roudebush, Mark D ..... Cordova, TN	12/20/2001
Rouselle, Dionne Marie ..... Memphis, TN	12/20/2001
Rubinstein, David M ..... Tamarac, FL	12/20/2001
Schwirian, Jay A ..... White Oak, PA	12/20/2001
Smith, Terrance Herbert ..... Sioux Falls, SD	12/20/2001
Smith, William H III ..... Philadelphia, PA	12/20/2001
Sparks, Darlene V ..... Annandale, VA	12/20/2001
Stevens, Joanne K ..... Broadview Hgts, OH	12/20/2001
Strasser, Robert T ..... Lake Zurich, IL	12/20/2001
Thompson, Emma R ..... Lithonia, GA	12/20/2001
Van Brookhoven, Gloria ..... Atlanta, GA	12/20/2001
Vodvarka, James M ..... Steubenville, OH	12/20/2001
Webb, James R ..... Shawnee Mission, KS	12/20/2001
Wohlschlaeger, Michael Alan ... Panama City Bch, FL	12/20/2001
Wolf, Jacob M ..... Akron, OH	12/20/2001
Wright, Bill G ..... Lincoln, NE	12/20/2001
Yoder, Patricia L ..... Ocklawaha, FL	12/20/2001
Young-Cheney, Joan E ..... Creswell, OR	12/20/2001
Peer Review Organization Cases	
Hinkley, Bruce Stanton ..... Dallas, TX	11/14/2001

Dated: December 3, 2001.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 01–32156 Filed 12–31–01; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Peter A. Soukas, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 268; fax: 301/402–0220; e-mail: *soukasp@od.nih.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

LL–37 is an Immunostimulant

Oleg Chertov (NCI), Joost Oppenheim (NCI), De Yang (NCI), Qian Chen (NCI), Ji Wang (NCI), Mark Anderson (EM), Joseph Wooters (EM)

Serial No. 09/960,876 filed 21 Sep 2001

This invention relates to use of an antimicrobial peptide as a vaccine adjuvant. LL–37 is the cleaved antimicrobial 37-residue C-terminal peptide of hCAP18, the only identified member in humans of a family of proteins called cathelicidins. LL–37/hCAP18 is produced by neutrophils and various epithelial cells. LL–37 is well known as an antimicrobial peptide. However, although antimicrobial peptides have generally been considered to contribute to host innate antimicrobial defense, some of them may also contribute to adaptive immunity against microbial infection. The inventors have shown that LL–37 utilizes formyl peptide receptor-like 1 (FPLR1) as a receptor to activate human neutrophils, monocytes, and T cells. Since leukocytes participate in both innate and adaptive immunity, the fact that LL–37 can chemoattract human leukocytes may provide one additional mechanism by which LL–37 can contribute to host defense against microbial invasion, by participating in the recruitment of leukocytes to sites of infection. The invention claims methods of enhancing immune responses through the administration of LL–37 alone, in conjunction with a vaccine, and methods of treating autoimmune diseases. The invention is further described in Chertov et. al., ''LL–37, the neutrophil granule- and epithelial cell-derived cathelicidin, utilizes formyl peptide receptor-like 1 (FPRL1) as a receptor to chemoattract human peripheral blood neutrophils, monocytes, and T cells,'' J Exp. Med. 2000 Oct 2;192(7):1069–74.

A Method for Bioconjugation Using Diels-Alder Cycloaddition

Vince Pozsgay (NICHD)

Serial Number 09/919,637 filed 01 Aug 2001

This invention relates to a new method for the synthesis of conjugate vaccines using the Diels-Alder cycloaddition reaction to covalently attach a carbohydrate antigen from a pathogen to a protein carrier. The Diels-Alder reaction has not been extended to conjugation involving biopolymers or other types of polymeric materials. Advantages of this method are that cross-linking during conjugation is entirely avoided in addition to the mild chemical conditions under which this synthesis method proceeds. Diels-Alder reactions commonly take place in high-temperature environments; the method contemplated by this invention takes place at much lower temperatures. In addition to claiming methods of synthesis for conjugate vaccines using the Diels-Alder cycloaddition, the patent application claims vaccines produced utilizing the method, and methods of inducing antibodies which react with the polysaccharides contemplated by the invention.

Identification of New Small RNAs and ORFs

Susan Gottesman (NCI), Gisela Storz (NICHD), Karen Wassarman (NICHD), Francis Repoila (NCI), Carsten Rosenow (EM)

Serial No. 60/266,402 filed 01 Feb 2001

The inventors have isolated a number of previously unknown sRNAs found in E. coli. Previous scientific publications by the inventors and others regarding sRNAs have shown these sRNAs to serve important regulatory roles in the cell, such as regulators of virulence and survival in host cells. Prediction of the presence of genes encoding sRNAs was accomplished by combining sequence information from highly conserved intergenic regions with information about the expected transcription of neighboring genes. Microarray analysis also was used to identify likely candidates. Northern blot analyses were then carried out to demonstrate the presence of the sRNAs. Three of the sRNAs claimed in the invention regulate (candidates 12 and 14, negatively and candidate 31, positively) expression of RpoS, a major transcription factor in bacteria that is important in many pathogens because it regulates (amongst other things) virulence. The inventors' data show that these sRNAs are highly

conserved among closely related bacterial species, including Salmonella and Klebsiella, presenting a unique opportunity to develop both specific and broad-based antibiotic therapeutics. The invention contemplates a number of uses for the sRNAs, including, but not limited to, inhibition by antisense, manipulation of gene expression, and possible vaccine candidates.

Peptides that Stabilize Protein Antigens and Enhance Presentation to CD8+ T Cells

Roger Kurlander, Elizabeth Chao, Janet Fields (CC)

DHHS Reference No. E–172–99/1 filed 12 Dec 2000 (PCT/US00/33027, published as WO 01/40275), with priority to 06 Dec 1999

This invention relates to compositions and methods for stabilizing an antigen against proteolytic degradation and enhancing its presentation to CD8+ cells. The invention claims ''fusion agents,'' isolated molecules comprising a hydrophobic peptide joined to an epitope to which a CD8+ T cell response is desired. Also claimed in the invention are the nucleic acid sequences that encode the fusion agents. Recently, there has been great interest in developing vaccines to induce protective CD8+ T cell responses, however, there are practical obstacles to this goal. Although purified antigenic peptides are effectively presented in vitro, introduced in a purified form they often do not stimulate effective T cell responses in vivo because the antigens are insufficiently immunogenic and too easily degraded. Adjuvants or infectious ''carriers'' often can enhance these immune responses, however, these added agents can cause unacceptable local or systemic side effects. The present invention increases antigen stability and promotes in vivo responses in the absence of an adjuvant or active infection.

The invention describes three variants of lemA, an antigen recognized by CD8+ cells in mice infected with Listeria monocytogenes. The antigenic and stabilizing properties of lemA can be accounted for by the covalent association of the immunogenic aminoterminal hexapeptide with the protease resistant scaffolding provided by amino acids 7 to 33 of the lemA sequence (lemA(7–33)). Variants t-lemA, and s-lemA bearing an antigenic sequence immediately preceding lemA(7–33), and lemS containing an immunogenic sequence immediately after lemA(7–33), each induce a CD8+ T cell response and protect the crucial immunogenic oligopeptide from protease degradation. The site of antigen insertion relative to lemA(7–33) can influence antigen processing by preferentially promoting processing either in the cytoplasm or endosomal compartment. Therefore, several embodiments of the invention involve the construction of antigen processing protein molecules and their methods of use. Alternatively, a DNA sequence coding lemA(7–33) may be inserted at an appropriate site to enhance the immunogenicity of the antigenic element coded by a DNA vaccine. In sum, this invention is an attractive, nontoxic alternative to protein/adjuvant combinations in eliciting CD8 responses in vivo and a useful element for enhancing the efficiency with which products coded by DNA vaccines are processed and presented in vivo. Because lemA(7–33) is particularly effective in protecting oligopeptides from proteases, this invention may have particular usefulness in enhancing local T cell at sites such as mucosal surfaces where there may be high proteolytic activity.

For more specific information about the invention or to request a copy of the patent application, please contact Peter Soukas at the telephone number or e-mail listed above. Additionally, please see a related article published in the Journal of Immunology at: 1999;163:6741–6747.

Vibrio cholerae O139 Conjugate Vaccines

Shousun Szu, Zuzana Kossaczka, John Robbins (NICHD)

DHHS Reference No. E–274–00/0 filed 01 Sep 2000 (PCT/US00/24119)

Cholera remains an important public health problem. Epidemic cholera is caused by two Vibrio cholerae serotypes O1 and O139. The disease is spread through contaminated water. According to information reported to the World Health Organization in 1999, nearly 8,500 people died and another 223,000 were sickened with cholera worldwide. This invention is a polysaccharide-protein conjugate vaccine to prevent and treat infection by Vibrio cholerae O139 comprising the capsular polysaccharide (CPS) of V. cholerae O139 conjugated through a dicarboxylic acid dihydrazide linker to a mutant diphtheria toxin carrier. In addition to the conjugation methods, also claimed in the invention are methods of immunization against V. cholerae O139 using the conjugates of the invention. The inventors have shown that the conjugates of the invention elicited in mice high levels of serum antibodies to CPS, a surface antigen of Vibrio cholerae O139, that have vibriocidal activity. Clinical trials of the two most immunogenic conjugates have been planned by the inventors. This invention is further described in Infection and Immunity 68(9), 5037–5043, Sept. 2000.

Dated: December 19, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–32170 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: December 21, 2001.

Time: 8:30 am to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: December 21, 2001.

Time: 3:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32160 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: January 15–16, 2002.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Aftab A. Ansari, PhD., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25S, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32161 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: January 14, 2002.

Time: 1:30 am to 3:30 pm.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David I Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, *dsommers@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32162 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodation, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: January 24-25, 2002.

Closed: January 24, 2002, 10:30 am to recess.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: January 25, 2002, 8 am to adjournment.

Agenda: Presentation of NIMH Acting Director's report and discussion of NIMH program, and policy issues.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed

and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's homepage: *www.nimh.nih.gov/council/advis.cfm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32163 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: January 8–9, 2002.

Time: 7:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Cambridge Hotel, 575 Memorial Drive, Cambridge, MA.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: January 16–17, 2002.

Time: 7 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Fitzpatrick Manhattan Hotel, 687 Lexington Avenue, New York, NY 10022.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32164 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Adviser Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: January 16–17, 2002.

Open: January 16, 2001, 1 p.m. to 5 p.m.

Agenda: For discussion of program policies and issues.

Place: 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: January 17, 2002, 9:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Mary Leveck, PhD, Deputy Director, NINR, NIH, Building 31, Room 5B05, Bethesda, MD 20892, (301) 594–5963.

Information is also available on the Institute's/Center's homepage: *www.nih.gov/ninr/a_advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health.

Dated: December 20, 2001

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32166 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: January 22, 2002.
Time: 11:30 am to 1:00 pm.
Agenda: To review and evaluate grant applications.
Place: 45 Center Drive, Natcher Building, Conference Room E1/2, Bethesda, MD 20892.
Contact Person: John R. Lymangrover, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4552.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32167 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine Subcommittee on Outreach and Public Information.
Date: February 12, 2002.
Open: 7:30 am to 8:30 am.
Agenda: Program documents.
Place: National Library of Medicine, 8600 Rockville Pike, Conference Room B, Bethesda, MD 20892.
Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine.
Date: February 12–13, 2002.
Open: February 12, 2002, 9:00 am to 4:30 pm.
Agenda: Administrative Reports and Program Discussion.
Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.
Closed: February 12, 2002, 4:30 pm. to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.
Open: February 13, 2002, 9:00 am to 12:00 pm.
Agenda: Administrative Reports and Program Discussion.
Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.
Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.
Date: February 12, 2002.
Closed: 12:00 pm. to 1:00 pm.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, Building 38A, HPCC Conference Room B1N30Q, 8600 Rockville Pike, Bethesda, MD 20894.
Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's homepage: *www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32168 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Special Review Panel—Telephone Conference (ZLM1 MMR P J2).
Date: January 15, 2002.
Time: 3 pm to 4 pm.
Agenda: To review and evaluate grant applications.
Place: National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, (Telephone Conference Call).
Contact Person: Merlyn M Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32169 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public as indicated below, with attendance limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended, for discussion of personal qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clinical Center.

Date: January 25, 2002.

Open: 9 am to 12 pm.

Agenda: For discussion of programmatic policies and issues.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 12 pm to 1 pm.

Agenda: To review and evaluate personnel qualifications.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Maureen E. Gormley, Executive Secretary, Warren Grant Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/496–2897.

Information is also available on the Institute's/Center's homepage: *www.cc.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

Dated: December 20, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–32165 Filed 12–31–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Workplace Helpline Call Record Form and Followup Survey

New—The Workplace Helpline is a toll-free, telephone consulting service which provides information, guidance and assistance to employers, community-based prevention organizations and labor offices on how to deal with alcohol and drug abuse problems in the workplace. The Helpline was required by Presidential Executive Order 12564 and has been operating since 1987. It is located in the Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention (CSAP), where it is managed out of the Division of Workplace Programs.

Callers access the Helpline service through one of its Workplace Prevention Specialists (WPS) who may spend up to 30 minutes with a caller, providing guidance on how to develop a comprehensive workplace prevention program (written policy, employee assistance program services, employee education, supervisor training, and drug testing) or components thereof. When a call is received, the WPS uses a Call Record Form to record information about the call, including the name of the company or organization, the address, phone number, and the number of employees. Each caller is advised that their responses are completely voluntary, and that full and complete consultation will be provided by the WPS whether or not the caller agrees to answer any question. To determine if the caller is representing an employer or other organization that is seeking assistance in dealing with substance abuse in the workplace, each caller is asked for his/her position in the company/organization and the basis for the call. In the course of the call, the WPS will try to identify the following information: basis or reason for the call (i.e., crisis, compliance with State or Federal requirements, or just wants to implement a prevention program or initiative); nature of assistance requested; number of employees and whether the business has multiple locations; and the industry represented by the caller (e.g., mining, construction, etc.). Finally, a note is made on the Call Record Form about what specific type(s) of technical assistance was given.

Callers to the Helpline may not, for a variety of reasons, contact the Helpline to describe any successes or failures they are having in implementing any prevention initiatives discussed with the Helpline staff. In addition, CSAP wants to know if the Helpline service is working as intended. Accordingly, the Helpline staff contacts a sample of callers to discuss the caller's progress in taking action based on the Helpline consultation, and whether or not they were satisfied with the Helpline service. Callers are told the reasons for the call and that their responses to questions are completely voluntary. If the caller is willing to participate, they are asked about the actions, if any, they took as a result of the consultation with the Helpline and if there were any obstacles to taking the desired action, such as resistance from employees and lack of time. The callers are also asked several questions to help determine if the consultation was useful and if the Helpline staff was helpful, and whether or not they would refer others to the Helpline. The annual average burden associated with the Helpline Call Record and Followup Survey are summarized below.

Form	Number of responses	Responses/ respondent	Burden/ response (hrs.)	Total burden (hrs.)
Call Record Form	4,200	1	.250	1,050
Followup Survey	960	1	.167	160
Total	4,200			1,210

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 20, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–32172 Filed 12–31–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4653–N–12]

Notice of Proposed Information Collection for Public Comment: Housing Choice Voucher Tenant Accessibility Study: 2002–2003

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice

SUMMARY: The proposed information collection requirement concerning a project to obtain information on the Housing Choice Voucher Tenant Accessibility Study 2002–2003 will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 4, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Dianne Thompson, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8154, Washington, DC 20410, telephone number (202) 708–5537 extension 5863 (this is not a toll-free number). Copies of the proposed forms and other available documents may be obtained from Ms. Thompson.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Housing Choice Voucher Tenant Accessibility study: 2002–2003.

Description of the need for the information and proposed use: The primary purpose of the proposed data collection is to develop a mail questionnaire for HUD that can be used with a national sample of Housing Choice Voucher tenants with physical disabilities to determine their satisfaction with the search process and the quality of their housing unit.

Members of affected public: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Task	Number of respondents	Frequency of responses	Hours per response	Burden hours
Questionnaire	400	once	25	50

Total Estimated Annual Burden Hours: 50 (one time).

Status of the proposed information collection: Pending OMB approval.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 21, 2001.

Lawrence L. Thompson,

General Deputy Assistant Secretary, for Policy Development and Research.

[FR Doc. 01–32192 Filed 12–31–01; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–19]

Housing Opportunities for Persons With AIDS Program; Announcement of Funding Award FY 2001

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this notice announces the funding decisions made by the Department under the Fiscal Year 2001 Housing Opportunities for Persons with AIDS (HOPWA) program. The notice announces the selection of 22 renewal applications, three new project applications, and three technical assistance applications under the three 2001 HOPWA national competitions which were announced under the Super Notice for HUD's Housing Community Development and Empowerment Programs and published in the **Federal Register** on February 26, 2001. The notice contains the names of award winners, describes grant activities and provides the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: David Vos, Director, Office of HIV/AIDS Housing, Department of Housing and Urban Development, Room 7212, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1934. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–2565. (Telephone numbers, other than ''800'' TTY numbers are not toll free.) Information on HOPWA, community development and consolidated planning, and other HUD programs may also be obtained from the HUD homepage on the World Wide Web. In addition to this competitive selection, 105 jurisdictions received formula based allocations during the 2001 fiscal year for $229.372 million in HOPWA funds. Descriptions of the formula programs is found at *www.hud.gov/offices/cpd/aidshousing.*

SUPPLEMENTARY INFORMATION: The purpose of the HOPWA program competition was to award project grants for the renewal continuing activities or for new projects that provide housing assistance and supportive services. Grants are made under two categories of assistance: (1) grants for special projects

of national significance which, due to their innovative nature or their potential for replication, are likely to serve as effective models in addressing the needs of low-income persons living with HIV/AIDS and their families; and (2) grants for projects which are part of long-term comprehensive strategies for providing housing and related services for low-income persons living with HIV/AIDS and their families in areas that do not receive HOPWA formula allocations. The purpose of the technical assistance competition was to select qualified providers to support the national goal for the sound management of the HOPWA program.

Under this year's competition HUD was required to renew all existing grants that were expiring in 2001 and if funding remained after funding eligible HOPWA renewal projects, HUD would consider applications for new HOPWA projects. A total of $21.5 million was awarded to the 22 eligible renewal grants. The remaining amount of $3.9 million, plus $107,526 in recaptured funds was made available to the three highest rated HOPWA competitive applications for new projects.

The HOPWA assistance made available in this announcement is authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901), as amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and was appropriated by the HUD Appropriations Act for 2001. The competition was announced in a Super Notice for HUD's Housing Community Development and Empowerment Programs published in the **Federal Register** on February 26, 2000 (66 FR 12223). Each application was reviewed and rated on the basis of selection criteria contained in that NOFA.

Public Benefit

The award of HOPWA funds to the 22 renewal projects, three new projects and three Technical Assistance awards will significantly contribute to HUD's mission in supporting projects that provide safe, decent and affordable housing for persons living with HIV/AIDS and their families who are at risk of homelessness. The projects proposed to use HOPWA funds to support the provision of housing assistance to an estimated 2,777 low-income people with HIV/AIDS and their families. In addition, an estimated 2,985 persons with HIV/AIDS are expected to benefit from some form of supportive service or housing information referral service that will help enable the client to maintain housing and avoid homelessness. The recipients of this assistance are expected to be very-low income or low-income households. These 25 applicants also documented that the Federal funds awarded in this competition, $25.5 million, will leverage an additional $38 million in other funds and non-cash resources including the contribution of volunteer time in support of these projects, valued at $10/hour. The leveraged resources will expand the HOPWA assistance being awarded by 149 percent.

A total of $25.5 million was awarded to 25 organizations to serve clients in the twenty-four listed States and $1.9 million for technical assistance activities across the nation.

In accordance with section 102(a) (4) (C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

FY 2001 HOPWA Renewal Awards by State

Alabama

AIDS Alabama, Inc. of Birmingham will receive a HOPWA renewal grant for $899,180 to continue the Alabama Rural AIDS Project (ARAP) to: (1) Outreach to eligible HIV positive, low-income persons; (2) link them with medical and supportive services, and (3) house (ultimately permanently) those HIV-positive, low-income persons who are homeless or marginally housed in the state's 35 most rural counties. ARAP will house 300 low-income, homeless persons with HIV/AIDS and 300 additional family members and provide 1,400 persons with supportive services over the three years of the project. AIDS Alabama will partner in this project with AIDS Services Centers of Anniston, AIDS Action Coalition of Huntsville, Montgomery AIDS Outreach, Mobile AIDS Support Services, East Alabama AIDS Outreach of Auburn, and West Alabama AIDS Outreach of Tuscaloosa. All partners are members of the AIDS Service Organization Network of Alabama. For information contact: AIDS Alabama, Inc. P.O. Box 55703; 3521 7th Avenue South Birmingham, AL 35222. Mr. Randall H. Russell, MSW, LGSW Executive Director; Phone: (205) 324–9822; Fax: (205) 324–9311; E-mail: *randall@aidsalabama.org.*

Arizona

The Pima County, Community Services Department will receive a HOPWA renewal grant in collaborative effort of Pima County and two project sponsors: the Southern Arizona AIDS Foundation (SAAF), and the City of Tucson. The project is designed to create a continuum of care for people who are low-income and HIV+, and their families, by filling gaps in both housing and services in Tucson and Pima County. Recognizing the importance of stable housing, the two primary goals of the Positive Directions project are: (1) to increase independence through subsidized, supportive housing; and (2) to maximize self-sufficiency through intensive, personalized services. The project addresses these through three key components: transitional housing; long-term rent subsidies; and support and referral services through intensive case management. For information contact: Pima County, Community Services Department, 32 North Stone Avenue, Suite 1600, Tucson, AZ 85701; Gary Bachman, (520) 740–5205 or by E-mail: *gbachman@csd.co.pima.az.s.*

California

In Los Angeles, the West Hollywood Community Housing Corporation will receive a HOPWA renewal grant for $630,535. Funds will be used to continue the Los Angeles Consortium for Service-Coordinated AIDS Housing, a collaboration of four nonprofit agencies providing permanent, supportive housing to very low-income persons living with HIV/AIDS. The three other partner agencies are the Hollywood Community Housing Corporation, Project New Hope and the Skid Row Housing Trust. Funding supports an Enhanced Management Model program, as well as expand services that promote long-term residential stability with residential and vocational service coordinators and an on-site learning program focused on computer skills. The project makes use of life skills development, and employment training and placement opportunities with permanent affordable housing to reach residents in at least 468 units at 26 sites over this grant period. For information contact: West Hollywood Community Housing Corporation, 8285 Sunset Blvd., Suite 3 West Hollywood, CA 90046. Mr. Lee Meyers, Director of Resident Services; Phone: (323) 650–8771 x13; Fax: (323) 650–4745; E-mail: *lee@whchc.org.*

The County of San Diego, Department of Housing and Community Development (DHCD) will receive a HOPWA renewal grant for $308,116 to continue the La Posada Project. DHCD works with the County Health and Human Services Agency and the Office of AIDS Coordination. The project provides service enriched housing opportunities throughout San Diego County to homeless and very low-

income HIV positive women and their children who have not participated in either the HIV or the homeless service delivery systems. The program provides operating costs, addiction services coordination, resident services coordination, and longitudinal outcome evaluation. The original grant supported the rehabilitation of 24-units in apartment complexes, which focus on needs for women and their children. The project will also continue to provide services to a minimum of six to twelve families at Fraternity House, Inc., a licensed residential care facility, and 12 families at La Posada Apartments with services from South Bay Community Services. An additional 100 clients will receive out-patient addiction counseling and recovery services and case management support through Stepping Stone of San Diego, Inc. For information contact: County of San Diego Department of Housing and Community Development, 3989 Ruffin Road, San Diego, CA 92134–1890. Ms. Marilee Hansen, Housing Program Analyst; Phone: (858) 694–8712; E-mail: *mhanse@co.san-diego.ca.us.*

In San Francisco, Lutheran Social Services of Northern California will receive a HOPWA renewal grant for $1,014,080 to continue The Bridge Project, a six-agency collaboration that provides transitional housing while addressing the complex service needs of indigent, multiply-diagnosed clients living with HIV/AIDS. The goals of the Bridge Project are threefold: (1) Increase the quantity and quality of housing for homeless, multiply-diagnosed persons with HIV/AIDS; (2) Provide direct access to health care, substance abuse counseling, mental health care, and benefits counseling for underserved multiply-diagnosed populations, and (3) Deliver these services through an integrated system of care which is cost-effective and meets the complex needs of the multiply-diagnosed client. With success in achieving its original goals, a renewal grant for one of the Multiple Diagnosis Initiative (MDI) Projects from HUD will enable this partnership to continue providing stable housing to current number of participants. For information contact: Lutheran Social Services of Northern California, 433 Hegenberger Road, #103 Oakland, CA 94621; Mr. Kevin Fautaux, Director, San Francisco Office; Phone: (415) 581–0891 ext. 103 Fax: (415) 581–0898; E-mail: *LSSkfaut@aol.com.*

In San Francisco, the Bernal Heights Neighborhood Center, Housing Services Affiliate will receive a HOPWA renewal grant for $692,648 to continue the operation of Positive MATCH. As one of the Multiple Diagnosis Initiative (MDI) Projects, this effort has provided a nationally significant model of integrated services and care for homeless multiply diagnosed mothers and children living with HIV. The innovative network of services and housing provides a specialized continuum of care for families that comprehensively addresses the needs of the family prior to and after the death of the infected parent. The project is an innovative collaborative project between a housing developer and four social service agencies skilled at providing social, legal, and mental health services for multiply diagnosed homeless women with HIV and their children. In October of 2001, the collaborative will complete the rehabilitation of the seven unit multi-bedroom permanent housing facility. Positive MATCH is seeking renewal funding to continue the provision of the integrated and replicable continuum of care that ensures permanent exits from homelessness. For information contact: Housing Services Affiliate-Bernal Heights Neighborhood Center, 515 Cortland Ave., San Francisco, CA 94110. Ms. Mary Dorst, Housing Project Manager; Phone: (415) 206–2140 ext. 147; Fax: (415) 648–0793; E-mail: *bernaldev@aol.com.*

Connecticut

The City of Bridgeport, Central Grants Office, will receive a HOPWA renewal grant for $1,312,821. The City will be coordinating with seven (7) project sponsors, in continuing support to 50 households under one of the Multiple Diagnosis Initiative (MDI) Projects. Under the Bridgeport AIDS/HIV Housing Initiative, the seven project sponsors include Prospect House, Bethel Recovery Center, and Alpha Home who are the housing providers; Helping Hand Center, Catholic Family Services, and Evergreen Network who are support service providers, and the Connecticut AIDS Residence Coalition which provides technical assistance and resource identification services. Based on the number of people served from the original HOPWA grant, these organizations anticipate that it will provide emergency services to a minimum of 175 multiple diagnosed persons with HIV/AIDS, and provide housing services to 60 multiply diagnosed individuals and families, through the project's unique Transitional Living Program (TLP). For information contact: City of Bridgeport, Central Grants Office, 999 Broad Street, Bridgeport, CT 06604; Kathleen Hunter, Assistant Director, Social Services; Phone (203) 576–8475, Fax (203) 567–8405; E-mail: *huntek0@ci.bridgeport.ct.us.*

District of Columbia

The Whitman-Walker Clinic, Inc. of Washington, DC will receive a HOPWA renewal grant for $1,139,255 to continue the Bridge Back Program a residential treatment facility for multiply diagnosed men and women with HIV/AIDS, substance abuse, and persistent mental illness. DC Bridge Back offers six months of intensive addiction treatment, medical, and psychosocial services for up to eight residents at a time. Bridge Back is a safe and supportive link back to appropriate housing in the community for people living with HIV/AIDS who suffer from severe substance abuse and chronic mental illness. Staff and clients work collaboratively to establish a treatment plan while in the program, and a discharge plan including appropriate housing and accessibility of supportive services in the community upon leaving the program. For information contact: Whitman-Walker Clinic, Inc., 1407 S. Street, NW., Washington, DC 20009. Ms. Mary L. Bahr, Associate Executive Director; Phone: (202) 797–3515; Fax: (202) 797–3504; E-mail: *mbahr@wwc.org.*

Florida

The City of Key West Community Development Office will receive a HOPWA renewal grant for $1,188,500 to continue their housing voucher program for persons living with HIV/AIDS in Monroe County. The City partners with AIDS Help, Inc. in providing assistance to clients in this high cost housing market. This Special Project of National Significance was modeled after HUD's Section 8 program with support to provide for independence and self-determination for clients. The program serves an estimated 50 households each year through tenant-based rental assistance and residency in housing facilities. Additionally, for disabled persons who experience improved health due to medical treatment advances, support from other sources includes back to work training in collaboration with the Florida Keys Employment and Training Council. For information contact: City of Key West Community Development Office, 1403 12th Street, Key West, FL 33040. Ms. Lee-Ann Broadbent, Program Administrator; Phone: (305) 292–1221; Fax (305) 292–1162.

Georgia

The City of Savannah, Community Planning and Development Division, will receive renewal funding of

$1,229,636 to continue operating Project House Call. The City partners with Union Mission, Inc., and two project partners—Georgia Legal Services Program and Hospice Savannah—and operate activities within the 10-member Savannah-Chatham AIDS Continuum of Care. Assistance is based on the use of a 10-unit community residence and short-term housing payments for 75 households. Under the original grant, this program prevented homelessness for 213 unduplicated individuals with HIV/AIDS who enrolled in Project House Call and received the provision of home-based services. The program provides services in the homes of PLWA/A's who might not otherwise have access to services within the Chatham/Effingham County areas. Project House Call is a lifeline for the population it serves, linking them with primary medical care, legal services, transportation assistance, substance abuse counseling, group therapies, and hospice services. For information contact: Community Planning and Development Division, Office of the City Manager, P.O. Box 1027, Savannah, GA 31402. Ms. Taffanye Young, Director; Phone: (912) 651–6520; Fax: (912) 651–6525; E-mail: *Taffanye_Young@ci.savannah.ga.us.*

Illinois

Cornerstone Services, Inc., of Joliet, will receive a HOPWA renewal grant of $789,160 to continue to provide scattered site permanent housing with supportive services for 16 households with persons living with HIV/AIDS who also have mental illness and who may be homeless. The program is located in Joliet and Cornerstone has partnered with the AIDS Ministry of Illinois (AMI), Stepping Stones (substance abuse treatment center) and Metro Infectious Disease Consultants (MIDC) to provide persons with HIV/AIDS and mental illness by offering a comprehensive array of services promoting choice, dignity, and the opportunity to live and work in the community. For information contact: Cornerstone Services, Inc., 777 Joyce Road, Joliet, IL 60436. Ms. Bette J. Reed Phone: (815) 741–6743; Fax: (815) 723–1177; E-mail: *breed@cornerstoneservices.org.*

Kentucky

The Division of Community Development for the Lexington-Fayette Urban County Government will received $1,362,860 to continue the AVOL AIDS Housing Program. This program provides housing, related case management, education and referrals, as well as transitional and supportive housing services for persons living with HIV/AIDS in Central and Eastern Kentucky. Activities are based at two housing facilities, Rainbow Apartments and Solomon House. Rainbow Apartments is a transitional housing program designed to respond to persons with HIV/AIDS who are homeless or at risk of homelessness and in need of a spectrum of supportive services while they work through issues that may have contributed to their homelessness. Solomon House is a community residence for individuals who require personal care, supervision and supportive services following an acute medical episode or who are in the advanced stages of their illness. Over the three year grant period, this program will serve 75 persons with HIV/AIDS through the housing facilities and an additional 300 individuals will receive housing information services. For information contact: Division of Community Development, Lexington-Fayette Urban County Government, 200 East Main Street Lexington, KY 40507. Ms. Irene Gooding, Grants Manager; Phone: (859) 258–3079; Fax: (859) 258–3081; E-mail: *ireneg@lfucg.com.*

Louisiana

UNITY for the Homeless of New Orleans will receive a HOPWA renewal grant for $1,216,896 to continue a program by six sponsor agencies, working within the community's extensive and well-established homeless continuum of care system to provide an integrated range of services and housing for persons with HIV/AIDS and their families who are homeless or at risk of becoming homeless. The Sponsors are the New Orleans AIDS Task Force, Project Lazarus, Children's Hospital FACES, Volunteers of America, Belle Reve and United Services for AIDS Foundation. The range of assistance to be provided includes: case management, mental health counseling, outreach services, day services, specialized employment services for person able to return to work, in-home and center-based respite care and residential substance abuse treatment for 18 individuals and two families. Direct housing support includes: residence at a care facility for 24 persons who are at the end stage of their illness, short-term rent, mortgage, utility assistance for 60 persons, and emergency shelter for 30. These AIDS housing efforts are also integrated with other homeless assistance programs operated by 45 agencies and coordinated through the City's continuum of care. For information contact: UNITY for the Homeless 2475 Canal Street, Suite 300 New Orleans, LA 70119; Ms. Margaret Reese, Executive Director; Phone: (504) 821–4496 ext.107; Fax: (504) 821–4709; E-mail: *pegreese@aol.com.*

Massachusetts

The AIDS Housing Corporation of Boston will receive a grant of $928,752 to continue SHARE 2000+, a cooperative partnership designed to meet the needs of HIV/AIDS housing programs and consumers in Greater Boston. SHARE 2000+ consists of four components: the Direct Care Relief Program, the Staff Development Program, the Donations Assistance Program, and the Staff Training Program. First funded in 1995, the program design is an innovative approach to capitalizing on existing expertise in the HIV/AIDS provider community and sharing resources to augment the efficiency and capacity of HIV/AIDS housing programs. Over the course of the grant period, SHARE 2000+ will provide services to 980 individuals and offer 4,000 hours of relief staffing. Share 2000+ consists of four core program components, representing four non-profit human service agencies: Direct Care Relief Program: Justice Resource Institute/JRI Health; Donations Assistance Program: Massachusetts Coalition for the Homeless; Staff Development Program: Victory Programs, Inc.; and Staff Training Program: AIDS Action Committee. For information contact: AIDS Housing Corporation, 29 Stanhope Street Boston, MA 02116. Joe Carleo Executive Director; Phone: (617) 927–0088 x31; Fax: (617) 927–0852; E-mail: *jcarleo@ahc.org.*

Maryland

The City of Baltimore, Department of Housing and Community Development, Office of Homeless Services will receive a HOPWA renewal grant for $1,363,136 to continue Back to Basics (B2B), a comprehensive case management program serving families in the Baltimore, MD who are dealing with the issues of HIV/AIDS, who are newly diagnosed (or newly disclosing their HIV status), who are in crisis, and who voluntarily elect to participate in an intensive case management program. Begun with the support of a 1998 SPNS grant, the goal is to empower families by helping them initially to meet their basic needs, such as food, clothing, and housing. Over time, help will be extended to develop client resources and skills to access the necessary healthcare and services to function as a unit, to maintain housing and economic stability in a safe environment and to live productive lives, for as long as possible. For information, contact:

Baltimore Office of Homeless Services, 417 E. Fayette Street Room 1211 Baltimore, MD 21202. Ms. Leslie Leitch Director, Phone: (410) 396–3757; Fax: (410) 625–0830; E-mail: *leslie.leitch@baltimorecity.gov.*

New Hampshire

Harbor Homes, Inc. of Nashau, New Hampshire will receive a HOPWA renewal grant for $447,057 to continue a HOPWA program that serves Hillsborough County, with the exception of Manchester. This area has an estimated 500 persons living with HIV/AIDS. The Southern New Hampshire HIV/AIDS Task Force, the only HIV/AIDS service provider in the area, is the designated Project Sponsor. The program will continue to provide emergency rental and utility assistance and supportive services, including barrier reduction, to a minimum of 391 persons living with HIV/AIDS over the three year period of the grant. Preference will be given to those who are homeless, in imminent danger of homelessness and/or those with dual or multiple diagnoses. For information contact: Harbor Homes, Inc., 12 Amherst Street, Nashau, NH, 03064. Peter Kelleher, Executive Director, Phone (603) 882–3616; Fax (603) 595–7414; E-mail *kelleher@harhomes.org.*

New Mexico

The Santa Fe Community Housing Trust will receive a HOPWA renewal grant for $1,286,000 to continue a Reentry Housing Strategies Program to assist persons living with HIV/AIDS (PLWAs) to transition back into a productive life. The program makes use of homeownership support for 14 households each year and recognizes that for some clients, the longevity and future life expectancy of PLWAs has changed significantly with the advent of new medical treatments. The purpose of the reentry program is to strategize a permanent solution to housing and income stabilization by assisting people to design their own reentry plan. It covers job training, educational prospects, and one-on-one counseling is provided to assist the clients to contact creditor and clean up credit issues. The reentry program makes homeownership possible and affordable through a mutual self help savings effort for downpayments and through leveraging community bank assistance for home purchases. The Trust issues loans or notes and has leveraging arrangements for over $8 million through area banks. Under the original grant, homeownership has been shown to be a significant incentive for clients in encouraging them to adhere to their difficult medical regimen, to pursue employment opportunities, and to transition into mainstream living. For information contact: Santa Fe Community Housing Trust, PO Box 713, Santa Fe, NM 87504–0713; Ms. Sharron L. Welsh, Executive Director; Phone: 505 989–3960; Fax: (505) 982–3690; E-mail: *sfcht505@aol.com.d*

New York

The Hudson Planning Group, Inc. will receive a HOPWA renewal grant for $451,700 to continue a resource identification program of shared financial management services for a New York City network of AIDS housing agencies and other service providers. The project, Management Services Organization (MSO), is presently serving two housing providers, Harlem United Community AIDS Center and Housing Works, Inc., through shared staff and technology that improves the infrastructure of nonprofit management. The use of MSO management tools, standard assessment, operating and reporting procedures, has resulted in more efficient use of management resources and higher levels of budgeting and planning advice in making use of financial data. The continuing project will include support for other non-profit, community based AIDS Services Organizations (ASOs), such as the Callen Lorde Community Health Center, the AIDS Day Services Association of New York (VidaCare subsidiary) and Hope Community, Inc., and is expected to reach nine providers over the next three years. This shared services model will also be tested for replication in other communities to promote similar management collaborations to establish, coordinate and develop housing assistance resources in those areas. In New York City, approximately 2,500 persons with HIV/AIDS will be served by the agencies participating in this project. For information contact: Hudson Planning Group, Inc., 180 Varick St., 16th Floor, New York, NY 10014; Mr. David Terrio, Managing Director; Phone: (212) 627–7900 x219; Fax: (212) 627–9247; E-mail: *Dterrio@BurchmanTerrio.com.*

Rhode Island

The Rhode Island Housing and Mortgage Finance Corporation (RIH), will continue its highly successful operations of a multi-faceted housing and supportive service program for persons living with HIV/AIDS (PLWAs) through a HOPWA renewal grant for $1,212,153. The grant sponsors, House of Compassion (HOC) located in northern RI, and AIDS Care Ocean State (ACOS) located in Providence will maintain a continuum of care for single adults and families affected by HIV/AIDS. The program provides supportive services, housing, and housing information services. Specific programs include the operation of two group homes, 12 scattered site apartments, and supportive services for all clients of both agencies. The past HOPWA grant has enabled the development of a seamless delivery of services ranging from housing referral to independent living and then supportive housing and related services. For information contact: Rhode Island Housing and Mortgage Finance Corporation; 44 Washington Street Providence, RI 02903. Ms. Susan Bodington, Director of Housing Policy; Phone: (401) 457–1286 Fax: (401) 457–1140 E-mail: *sbodington@rihousing.com.*

Washington

The Bailey-Boushay House project of the Virginia Mason Medical Center will receive a HOPWA renewal grant for $950,000 to sustain supportive services for people living with HIV/AIDS. Bailey-Boushay House is a nationally recognized care facility, which has provided intensive residential nursing health care and adult day care to more than 2,500 individuals since 1992. The goal of the project is to maintain and/or improve the behavioral stability of program participants and residents of the facility, enhancing their ability to obtain medical treatment and live independently in the community. The project will support mental health and substance abuse treatment for residents and program consumers, enhance clinical and management information systems, and assist the facility in developing capacity to conduct structured evaluations of the services. For information contact: Virginia Mason Medical Center, Bailey-Boushay House; 2720 East Madison Seattle, WA 98112; Ms. Leslie V. Ravensberg; Phone: (206) 720–3307 Fax: (206) 720–2299 E-mail: *leslie.von.ravensberg@vmmc.org.*

West Virginia

The State of West Virginia, Office of Economic Opportunity (OEO), will receive $1,085,928 of renewal funds for the continued operation of HOPWA assistance throughout the State. OEO is the supervising agent of a non-profit collaborative—the West Virginia Housing and Advocacy Coalition for People with AIDS, Inc. (Coalition), which consists of three partners: Covenant House, Inc. in Charleston; Caritas House, Inc. in Morgantown; and Community Networks, Inc. in Martinsburg. The Coalition is a statewide non-profit organization

created to establish a comprehensive and effective delivery of services to a homeless population with special needs associated with living with HIV/AIDS. The HOPWA program initiatives provide housing, supportive services, technical assistance, and resource identification to people living with HIV/AIDS and their family members. This project funding includes the continued operation of five (5) houses in which people with HIV/AIDS live, and the continuation of services to a growing number of over 350 persons infected with HIV and their affected family and household members. For information contact: West Virginia Office of Economic Opportunity; 950 Kanawha Blvd. E. 3rd Floor Charleston, WV 25301. Mr. Essa R. Howard Director; Phone: (304) 558–8860 Fax: (304) 558–4210 E-mail: *ehoward@oeo.state.wv.us.*

Wisconsin

The AIDS Resource Center of Wisconsin will receive a HOPWA renewal grant for $1,218,576 to continue providing intensive housing case management, rent assistance, and supportive services to persons living with HIV disease and who are also diagnosed with chronic drug abuse or mental illness issues and residing anywhere in the state of Wisconsin. In it's first two years of operations, ARCW's programs served 134 clients and reduced homelessness, increased adherence to medical, mental health and substance abuse treatment, reduced criminal behavior, and improved access to other HIV services. This support improved the client's quality of life, increased independence and reduced utilization of emergency medical care. The renewal funding will serve 195 people living with HIV/AIDS and allow for a 28 percent increase in the number of clients to be served. For more information: AIDS Resource Center of Wisconsin; P.O. Box 92487 Milwaukee, WI 53202. Mr. Doug Nelson, Executive Director; Phone: (414) 273–1991; Fax: 414–273–2357; e-mail: *doug.nelson@arcw.org.*

FY 2001 HOPWA New Projects by State

Iowa

The Iowa Finance Authority (IFA) is receiving $1,370,000 in HOPWA funding to create the AIDS Housing Network of Iowa. IFA has partnered with AIDS service organizations and housing agencies across the state, including to Siouxland Community Health Center, AIDS Project of Central Iowa, American Red Cross Grant Wood Area Chapter (Rapids AIDS Project), Family Service League, Iowa Center for AIDS Resources and Education, and John Lewis Coffee Shop. Under this grant, eighty-four of Iowa's counties, including those counties with the highest percentage of AIDS cases, will be served with housing and related supportive services. The AIDS Housing Network of Iowa will provide housing assistance to 237 persons living with HIV/AIDS and their families through 218 units of housing. Housing assistance will be provided through a 150 on-going tenant-based rental assistance units and 68 short-term emergency assistance subsidies. Additionally, 177 persons will receive related supportive services to ensure housing stability. Through the assistance of the Iowa Coalition for Housing and the Homeless, technical assistance will be provided to project sponsors and assistance will be given to the AIDS Housing Network in the development of a long-term housing strategy to evaluate needs for persons with HIV/AIDS across the State of Iowa.

For information contact: The AIDS Housing Network of Iowa, c/o Iowa Finance Authority, 100 East Grand Ave., Suite 250, Des Moines, IA, 50309. Donna Davis, Deputy Director, and Director of Housing Programs-IFA; Phone: (515) 242–4990; E-mail: donna.davis@ifa.state.ia.us.

Montana (and North Dakota and South Dakota)

The State of Montana Department of Public Health and Human Services in conjunction with the States of South Dakota and North Dakota will receive $1,309,501 for a three-year project to create the TRI-STATE HELP, Housing Environments for Living Positively (TS HELP). TS HELP is a continuum of housing and related supportive services opportunities for people living with HIV/AIDS and their families serving all three states, which do not qualify for HOPWA formula funding. TS HELP is a partnership between one State agency and four private agencies in North Dakota, South Dakota, and Montana. Overall grant administration will be undertaken by the Montana Department of Public Health and Human Services. The Sioux Empire Red Cross in South Dakota, Missoula AIDS Council in Montana, Yellowstone AIDS Project in Montana, Community Action Program, and Region VII in North Dakota will serve as sponsors. The Montana Department of Public Health and Human Services will conduct an independent evaluation of program outcomes and AIDS Housing of Washington, HOPWA Technical Assistance provider, will conduct a statewide HIV/AIDS housing needs assessment. TS HELP will assist persons living with HIV/AIDS by strengthening and expanding HIV/AIDS housing and related supportive services by providing 70 tenant-based rental assistance subsidies, 70 emergency assistance subsidies and housing coordination services to an estimated 232 individuals living with HIV/AIDS and their families. A variety of additional services and resources will be available to 175 persons living with HIV/AIDS and their families through HOPWA funding and leveraged resources.

For information contact: State of Montana, Department of Public Health and Human Services, 1400 Carter Drive, Helena, MT, 59620. Jim Nolan, Project Coordinator; Phone:(406) 447–4260; e-mail: *jnolan@state.mt.us.*

Oregon

The Health Division of the State of Oregon is awarded $1,370,000 of HOPWA funding to create the Oregon Housing Opportunities in Partnership (OHOP) program. OHOP will serve all 31 Oregon counties that are outside of the Portland metropolitan statistical area (MSA), which receives HOPWA formula funding. OHOP is a partnership between two State and four private agencies. The State of Oregon Health Division will serve as grantee and will work in partnership with the Oregon Housing and Community Services Department, the HIV Alliance, the Central Oregon Community Action Agency Network, On Track and the Mid-Willamette Valley Community Action Agency. The University of Oregon at Eugene will conduct an independent evaluation of program outcomes. Through leveraged funds, AIDS Housing of Washington, a nationally recognized HIV/AIDS technical assistance provider, and Development Solutions Group, a private consulting firm specializing in affordable housing, will provide assistance relating to needs assessment and program implementation. OHOP will provide tenant-based rental assistance and housing coordination services to an estimated 225 eligible clients. Through a variety of additional services and resources 120 persons living with HIV/AIDS and their families will benefit through increase housing stability.

For information contact: Oregon Department of Human Services, Health Division, 800 NE Oregon Street, #21, Portland, OR 97232–2162. Victor J. Fox, HIV Client Services Manager; Phone: (503) 731–4029; FAX: (503) 731–4608; e-mail: *victor.j.fox@state.or.us.*

HOPWA Technical Assistance Supplementary: Additionally, HUD awarded $2.5 million to three applicants

under the HOPWA Technical Assistance programs. The Purpose of the HOPWA Technical Assistance competition was to award grants that provide support from program operations. HUD established national goals for these funds: (1) Ensuring the sound management of HOPWA programs; and (2) targeting resources to underserved population.

FY 2001 Technical Assistance Awards by State

AIDS Housing of Washington

Under this award, AIDS Housing of Washington (AHW), based in Seattle, has been selected to receive $1,400,000 to continue the provision of National HOPWA Technical Assistance activities. AHW has provided assistance since 1995 and served as a pioneer in developing collaborations with housing and supportive services organizations for persons living with HIV/AIDS. AHW will continue its collaboration with Bailey House, Inc., (New York City), Abt Associates, the Corporation for Supportive Housing, and the AIDS Housing Corporation (Boston) and others to provide technical assistance to nonprofit organizations and State and local governments in planning, operating and evaluating housing assistance for persons who are living with HIV/AIDS and their families.

AHW will continue core assistance to help communities establish and enhance their comprehensive strategies for HIV/AIDS housing. In addition, the collaboration will promote the sound management and operation of HOPWA programs and coordinate evaluation activities that improve service delivery. In addition information services will help clients and communities better connect to available assistance and report on program accomplishments. This project adds a number of additional meetings and special initiatives to help assure that AHW and its partners meet the changing needs of HIV/AIDS housing providers and HOPWA grantees.

Through a new partnership with AIDS Alabama in Birmingham, AHW will launch a ''Southern Initiative'' that will bring all the skills, knowledge and resources of the National Technical Assistance Program to rural and urban southern parts of this country, with special emphasis on states comprising the lower Mississippi Delta. The desired outcome is to create permanent housing units dedicated to house persons living with HIV/AIDS and their families throughout the Southeast by networking with special needs housing agencies and support service delivery systems.

AHW also proposes to create eight to ten AIDS housing needs assessment plans, including four in the Southeastern States. The results of the needs assessment plans will help AHW in providing technical assistance on the full range of issues in AIDS housing planning, financing, development, operations, and program evaluation. Activities are being planned for a National HIV/AIDS Symposium in Summer 2002, a Fifth National HIV/AIDS Housing Conference in June 2003, and a National Meeting of HOPWA Formula Grantees in Fall 2003.

Outreach and education efforts will continue to be maintained and expanded on the World Wide Web site. AHW and its partners and subcontractors will research, and disseminate training resources and manuals on critical AIDS topics through the website database and existing curricula materials.

For information, contact: Donald Chamberlain, Director of Technical Assistance, AIDS Housing of Washington, 2014 East Madison Street, Suite 200,Seattle, Washington 98122, (206) 322–9444, (206) 322–9298 fax, e-mail: *donald@aidshousing.org, www.aidshousing.org*

Center for Urban Community Services, Inc.

The Center for Urban Community Services (CUCS), a non-profit organization based in New York City, received a National HOPWA Technical Assistance award of $400,000 to continue the provision of services throughout the country.

CUCS will continue the Housing Innovation Partnership to support sound management of AIDS housing programs. The partnership involves five sponsors: the Hudson Planning Group, a New York based provider that specializes in community based planning, knowledge of HUD programs and services, housing development for special needs populations, and financial management; the Corporation for Supportive Housing, a national intermediary organization with branch offices located in eight cities across the country has an array of skills in management operations of HUD programs, Lakefront SRO, a Chicago based operator of supportive SROs, with experience in supportive housing development, management with supportive services delivery; Barry University School of Social Work, located in Miami, which brings an understanding of the latest trends in academic theory and research; and Debbie Grieff Consulting, a Los Angeles based firm, brings substantial experience in supportive housing development and operations. Technical assistance training sessions recently were provided in the cities of New York, Chicago, Atlanta, Memphis, New Orleans and Raleigh-Durham under their FY1999 HOPWA technical assistance award.

Under this new grant, CUCS proposes to address these priority technical assistance needs: developing programs and services for people with multiple diagnosis; adapting programs to serve the changing needs of people living with the HIV; assisting providers in developing new housing services; strengthening the management of AIDS housing organizations and developing innovative solutions to maximize resources and ensure comprehensiveness. A series of Guidebooks will be produced on subjects related to HOPWA Program activities. Linkages with project sponsors throughout the country will be strengthened to coordinate on site delivery of technical assistance. Outreach and education opportunities will be increased with the operation of the CUCS ''800'' training /TA phone line which permits underserved populations and interested persons to raise housing issues as they occur and receive a one-on-one TA relationship. CUCS will continue to contact HUD field offices, persons living with HIV/AIDS, grantees, and project sponsors for insight in addressing housing and supportive services issues.

For information, contact: Suzanne Wagner, Director of Training and Technical Assistance, Center for Urban Community Services, 120 Wall Street, 25th Floor, New York, New York 10005, (800) 533–4449, (212) 801–3318, (212) 635–2191/fax, e-mail: *suzannew@cucs.org, www.cucs.org*

The Enterprise Foundation—Denver

Under this award for $100,000, the Denver Office of the Enterprise Foundation will support HOPWA projects in Colorado and other mountain States. Enterprise will make use of training and technical assistance materials, state-of-the art information technology, and hands-on assistance to transfer its expertise to community-based providers. In Denver, Enterprise will provide technical support to the City's Housing and Neighborhood Services Agency which manages HOPWA and Ryan White CARE Act funds in the Denver metropolitan area and collaborates with the City's HIV/AIDS Housing Advisory Committee. The support activities include training on:

- HOPWA program management, including development of effective

client tracking systems, training on performance reporting and financial management; and development of program management handbooks.

• Cultural competency, such as training for service providers to enable more responsive and effective work with diverse client populations.

• Improved service coordination, particularly in helping residents access needed services from other mental health, drug and alcohol rehabilitation, and physical health service providers.

• Employment support, such as advice in developing effective back-to work programs that enable residents to start and continue working while addressing the health care issues that interfere with their ability to work on a regular schedule, or in certain occupations.

Enterprise will also assess support needed by nonprofits to improve financial and program management systems, and to strengthen collaborations among housing and other service providers. The assistance will be provided by Enterprise-Denver staff and consultants who have experience in strategic planning, organizational development, housing development and management, program management and supportive services for HIV/AIDS populations. Enterprise-Denver will also be supported by its national office in drawing upon a wide range of existing Enterprise tools and experience in the development and operation of affordable housing programs and community-based development.

For information, contact: Karen Lado, Director, Denver Office, The Enterprise Foundation, 1801 Williams Street, Suite 200, Denver, CO 80218, (303) 376–5410. William Frey, Interim President, The Enterprise Foundation, 10227 Wincopin Circle, Suite 500, Columbia, MD 21044, (410) 772–2422.

Total for all 22 Renewal Grants	$21,544,025
Total for 3 New Project Grants	4,049,501
Total for 3 Technical Assistance Grants	1,900,000
Total	27,493,526

Dated: December 21, 2001.

Donna M. Abbenante,

General Deputy, Assistant Secretary for Community, Planning and Development.

[FR Doc. 01–32191 Filed 12–31–01; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Incidental Take Permit and Habitat Conservation Plan for Cyanotech Corporation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Cyanotech Corporation (Cyanotech) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service proposes to issue a 3-year permit to Cyanotech that would authorize take (harm, harassment, death or injury) of the endangered Hawaiian stilt, (*Himantopus mexicanus knudseni*) incidental to otherwise lawful activities. Such take would occur as a result of ongoing operation and maintenance of Cyanotech Corporation's acquaculture facility at Keahole Point on the island of Hawaii.

We request comments from the public on the permit application which includes a Habitat Conservation Plan (HCP) for the Hawaiian stilt. We also request comments on our preliminary determination that the Cyanotech HCP qualifies as a ''low-effect'' habitat conservation plan, eligible for a categorical exclusion under the National Environmental Policy Act.

DATES: Written comments should be received on or before February 1, 2002.

ADDRESSES: Comments should be addressed to Mr. Paul Henson, Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 50088, Honolulu, Hawaii 96850; facsimile (808) 541–3470.

FOR FURTHER INFORMATION CONTACT: Ms. Gina Shultz, Supervisory Fish and Wildlife Biologist, at the above address or telephone (808) 541–3441.

SUPPLEMENTARY INFORMATION:

Document Availability

Cyanotech's permit application and associated HCP, and the Service's Environmental Action Statement, are available for public review. The HCP describes the existing conditions at the Cyanotech aquaculture facility and the proposed measures that Cyanotech would undertake to minimize and mitigate take of the Hawaiian stilt. The Environmental Action Statement describes the basis for the Service's preliminary determination that the Cyanotech HCP qualifies as a low effect plan eligible for a categorical exclusion from further documentation under the National Environmental Policy Act.

You may obtain copies of the documents from review by contacting the office named above. You also may make an appointment to view the documents at the above address during normal business hours. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public.

Background

Section 9 of the Act and its implementing regulations prohibit the ''take'' of threatened or endangered species. Take is defined under the Act to include harass, harm, pursue, hunt shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in any such conduct (16 U.S.C. 1538). Harm includes significant habitat modification where it actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering 50 CFR 17.3(c). Under limited circumstances the Service may issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 50 CFR 17.22, respectively.

Cyanotech cultivates and harvests microalgae for commercial sale. The Cyanotech facility currently occupies approximately 90 acres of land and includes a series of man-made ponds or ''raceway ponds'' where the microalgae is grown; office and maintenance buildings; and laboratory, research, and processing buildings. The nutrient rich ponds support high-density invertebrate populations, a primary food source for the endangered Hawaiian stilt. Stilts are attracted to and nest within and adjacent to the aquaculture facility. Hawaiian stitl chicks that hatch at the facility are led by parents stilts to the ponds to feed where they are suspected either of drowning in the rapidly flowing waters or dying from adverse physiological reactions (e.g., acute dehydration) associated with ingestion of the hypersaline, high-alkaline conditions of the alga medium required for production. Cyanotech's aquaculture operation thus inadvertently attracts stilts to a man-made habitat that is unsuitable for successful stilt reproduction.

Under the HCP, Cyanotech would minimize incidental take of the Hawaiian stilt by implementing deterrence measures designed to eliminate stilt foraging and nesting at the Cyanoteck Facility. The following non-lethal deterrence measures would

be evaluated and may be implemented: (1) reduce or eliminate the invertebrate food source, (2) reconfigure raceway ponds to make them unattractive to the Hawaiian stilt, (3) net ponds to exclude Hawaiian stitl, (4) use biodegradable repellents, and (5) implement various hazing methods. Cyanotech will mitigate for incidental take of Hawaiian stilt eggs and chicks by creating suitable nesting habitat onsite. These measures would ensure (1) positive Hawaiian stilt reproductive success, (2) recruitment of fledged birds into the overall population, and (3) that the Cyanotech facility does not become a reproductive sink for stilts.

The Service's Proposed Action consists of the issuance of an incidental take permit and implementation of the HCP, which includes measures to minimize the incidental take of Hawaiian stilt eggs, chicks, subadults, and adults, and measures to mitigate any incidental take of Hawaiian stilts eggs and chicks at the Cyanotect facility. The four alternatives to the proposed alternative considered in the HCP are: (1) No Action, (2) Long-term Management Off Site, (3) Haze/Fee, and (4) Integrated Management Approach.

Under the No Action Alternative, no permit would be issued. Cyanotech would continue its microalgae operation without an HCP to address take of the Hawaiian stilt. Cyanotech did not select this option as it would be in violation of Section 9 of the Act.

Under the Long-term Management Off Site Alternative, Cyanotech would contribute funds to create, restore, or enhance habitat for Hawaiian stilt at an off site location. This alternative would provide mitigation for take of the Hawaiian stilt however, Cyanotech did not select this alternative due to the prepetutation of incidental take that would be caused by continued foraging and nesting of stilts at the Cyanotech facility.

Under the Haze/Fee Alternative, Cyanotech would haze Hawaiian stilts using non-lethal deterrents. This alternative may minimize take, however, Cyanotech did not select this alternative because hazing birds from a site has not proven effective as a long-term solution and would likely result in a long-term commitment of resources without reducing stilt numbers at the Cyanotech facility.

Under the Integrated Management Approach Alternative, Cyanotech would implement non-lethal bird deterrence, manage protected nesting habitat for 1 year only, and reallocate funds from on-site management to an off-site mitigation fund in years 2 and 3. Cyanotech did not select this alternative due to the unconditional closure of the on-site protected habitat after 1 year and the desire for flexibility provided by adaptive management.

The Service has made a preliminary determination that the Cyanotech HCP qualifies as a ''low-effect'' plan as defined by its Habitat Conservation Planning Handbook (November 1996). Our determination that a habitat conservation plan qualifies as a low-effect plan is based on the following three criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, or candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present and reasonable foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. As more fully explained in our Environmental Action Statement, Cyanotech's HCP for the Hawaiian stilt qualifies as a ''low-effect'' plan for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Hawaiian stilt. The Service does anticipate significant direct or cumulative effects to the Hawaiian stilt from Cyanotech's microalgae operation.

2. Approval of the HCP would not have adverse effects on unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any cumulative or growth inducing impacts and, therefore would not result in significant adverse effects on public health or safety.

4. The HCP does not require compliance with Executive Order 11998 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or Fish and Wildlife Coordination Act, nor does it threaten or violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the HCP would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

We provide this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for the National Environmental Policy Act (40 CFR 1506.6). We will evaluate the permit application, HCP, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and National Policy Act regulations. If we determine that the requirements are met, we will issue a permit under section 10(a)(1)(B) of the Act to Cyanotech for take of Hawaiian stilt incidental to otherwise lawful activities in accordance with the HCP. We will fully consider all comments received during the comment period and will not make our final decision until after the end of the 30-day comment period.

Dated: December 18, 2001.

Rowan W. Gould,

Deputy Regional Director, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 01–32142 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–PB–24 1A; OMB Approval Number 1004–0005]

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On August 21, 2001, the BLM published a notice in the **Federal Register** (66 FR 43901) requesting comments on this proposed collection. The comment period ended on October 22, 2001. The BLM received no comments from the public in response to that notice. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0005), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity and methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Grazing Application-Grazing Schedule (43 CFR 4130).

OMB Approval Number: 1004–0005.

Bureau Form Number: 4130–1.

Abstract: The Bureau of Land Management uses the information to provide the opportunity for grazing operators to apply for changes to the grazing schedules in their BLM authorized grazing leases or permits.

Frequency: On occasion.

Description of Respondents: Holders of BLM-issued grazing leases and permits.

Estimated Completion Time: 20 minutes.

Annual Responses: 6,000.

Application Fee per Response: 0. There is no filing fee.

Annual Burden Hours: 2,000.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: December 11, 2001.

Michael H. Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01–32126 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–1430–ER–CACA–43368]

Proposed Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the San Diego Gas And Electric Company Valley-Rainbow 500 kV Interconnect Project, CA

AGENCY: Bureau of Land Management (BLM), and the California Public Utilities Commission (CPUC).

ACTION: Notice of Intent to prepare a joint EIS/EIR addressing the proposed Valley-Rainbow 500–kV Interconnect Project; an electrical transmission line project.

SUMMARY: In compliance with regulations at 40 CFR 1501.7 and 43 CFR 1610.2, notice is hereby given that the BLM, together with the CPUC, propose to direct the preparation of a joint EIS/EIR for the 500 kilovolt (kV) Valley-Rainbow Interconnect Project, proposed by the San Diego Gas and Electric Company (SDG&E). The BLM is the lead Federal agency for the preparation of this EIS/EIR in compliance with the requirements of the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulation for implementing NEPA (40 Code of Federal Regulations [CFR] 1500–1508), and the Department of the Interior's manual guidance on NEPA; and the CPUC is the lead State of California agency for the preparation of this EIS/EIR in compliance with the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 *et. seq.*), and implementing guidelines (California Code of Regulations [CCR] Title 14, Section 15000 *et. seq.*), and CPUC's Rules and Regulations to Implement CEQA. This notice initiates the public scoping for the EIS and also serves as an invitation for other cooperating agencies. Potential cooperating agencies include the U.S. Fish and Wildlife Service, the Department of Defense, the Bureau of Indian Affairs, the State Historic Preservation Officer, U.S. Corps of Engineers and the California Department of Fish and Game.

DATES: For scoping meeting and comments: One NEPA public scoping openhouse will be held during 2002 on the following date: January 8, 2002, from 3:00 pm to 8:00 pm, at the Comfort Inn, 27338 Jefferson Ave., Temecula, California.

Written comments must be postmarked no later than 30 days from the date of this notice in order to be included in the draft EIR/EIS. Please submit any comments to the address listed below.

ADDRESSES: Written comments should be addressed to Mr. James G. Kenna, Field Manager, Bureau of Land Management, Palm Springs-South Coast Field Office, 690 West Garnet Ave, P.O. Box 581260, North Palm Springs, California 92258–1260.

FOR FURTHER INFORMATION CONTACT: John Kalish, Bureau of Land Management, Palm Springs-South Coast Field Office, 690 West Garnet Ave, P.O. Box 581260, North Palm Springs, California 92258–1260, (760) 251–4849.

SUPPLEMENTARY INFORMATION: The Valley-Rainbow 500 kV Interconnect Project is proposed by SDG&E to provide an interconnection between SDG&E's existing 230 kV transmission system at the proposed Rainbow Substation, on Rainbow Heights Road near the unincorporated community of Rainbow in San Diego County, and the Southern California Edison's (SCE) existing 500 kV transmission system at the Valley Substation on Menifee Road in the unincorporated community of Romoland in Riverside County. The project area is located entirely in California within northern San Diego County and western Riverside County.

This project consists of the following new or expanded electric transmission and substation facilities. A single circuit 500 kV electric transmission line approximately 31 miles in length would connect a proposed new SDG&E 500 kV/230 kV bulk power transmission substation near the community of Rainbow, San Diego County to SCE's Valley substation near Romoland, Riverside County. The proposed 500 kV transmission line would be built on steel poles and lattice towers within a new right-of-way. To support this proposed 500 kV Interconnect system, a second 230 kV circuit would be added to the existing Talega to Escondido 230 kV transmission line on the U.S. Marine Corps Base, Camp Pendleton and private lands within San Diego County. This proposed second 230 kV circuit would be placed on existing steel supported structures. A 7.7 mile section of an existing 69kV transmission circuit, currently installed on one side of the Talega-Escondido 230 kV transmission line structures, would be rebuilt on new structures within the existing right-of-way between SDG&E's Pala and Lilac Substations, San Diego County. Voltage support upgrades to SDG&E's existing Mission, Miguel and Sycamore Canyon substations would also be needed.

The CPUC held public scoping meetings from July 10–12, 2001 in the communities of Temecula, Winchester and Pauma Valley and accepted comments from June 30 through August 7, 2001. The BLM actively participated in this State scoping process as the lead Federal agency. The State scoping process resulted in substantial comment that is broadly summarized as involving environmental issues and concerns, growth inducement, purpose and need for the project and alternatives. Possible impacts to quality of life, property values, visual and aesthetic qualities of the area, wine making and other agricultural operations, placement of schools and parks, community and residential development, recreation including hot air ballooning and human health were addressed by the public. In addition to these concerns, the BLM has identified issues related to wildlife,

including threatened and endangered species, cultural resources, and Native American concerns.

Interested members of the public are now invited to participate in a NEPA scoping process, and are requested to help identify new issues or concerns and alternatives to be considered related to this proposed Project. Comments previously submitted during the CPUC scoping process are part of the official record and need not be resubmitted during this NEPA process. Written comments must be submitted no later than 30-days from the date of this notice to ensure that your comments are included in the draft EIS/EIR. When available, the public will be provided a 60-day public review period on the EIS/EIR. These documents will be made available on the Internet at BLM's Web site: *www.ca.blm.gov* and the CPUC Web site: *www.cpuc.ca.gov/divisions/energy/Environmental/info/DUDEK/valleyrainbow.htm* and at local public libraries in the California communities of Chula Vista, Escondido, Fallbrook, San Clemente, Sun City and Temecula. Contact the BLM if you would like to be included in the mailing list to receive copies of all public notices relevant to this project. Local notice will be provided a minimum of 15 days prior to the scoping open house date.

Dated: November 30, 2001.

James G. Kenna,

Field Manager.

[FR Doc. 01–32124 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(WO–220–01–1020–JA–VEIS)

Notice of Extension of Public Comment Period and Schedule of Public Scoping Meetings for the Environmental Impact Statement for the Conservation and Restoration of Vegetation, Watershed, and Wildlife Habitat Treatments on Public Lands Administered by the Bureau of Land Management in the Western United States, Including Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of public comment period for scoping; and dates and locations for public scoping meetings.

SUMMARY: Pursuant to section 102 (2) (C) of the National Environmental Policy Act of 1969 (NEPA), the BLM will prepare a national, programmatic EIS and conduct public scoping meetings on (1) management opportunities and treatment methods for noxious weeds and other invasive species, and (2) the conservation and restoration of native vegetation, watersheds, and wildlife habitat. The EIS will cover the public lands administered by BLM in 16 western states, including Alaska. The period for initial scoping comments from the public has been extended to March 29, 2002.

DATES: Written or e-mailed comments for the initial scoping phase may be submitted through March 29, 2002. BLM will hold public scoping meetings to focus on relevant issues and environmental concerns, identify possible alternatives, and help determine the scope of the EIS.

Dates and locations for the scoping meetings are as follows:

Date and time	Locations	BLM contact
January 8, 5–8 p.m	Utah Dept. of Natural Resources Bldg. 1594 W. North Temple, Salt Lake City, UT.	Verlin Smith (801) 539–4055.
January 10, 3–6 p.m	Western Wyoming Community College, Room 1003, 2500 College Drive, Rock Springs, WY.	Lance Porter (307) 352–0252.
January 14, 6–9 p.m	Holiday Inn Express—Neptune Room, 1100 North California, Socorro, NM.	Margie Onstad (505) 838–1256.
January 16, 3–5 p.m. and 6–9 p.m	Holiday Inn Crown Plaza, 2532 W. Peoria Avenue, Phoenix, AZ.	Deborah Stevens (602) 417–9215.
January 22, 6–9 p.m	BLM Office Conference Room, 345 E. Riverside Drive, St. George, UT.	Kim Leany (435) 688–3208.
January 24, 2–5 p.m. and 6–9 p.m	Grand Vista Hotel, 2790 Crossroads Blvd, Grand Junction, CO.	Harley Metz (970) 244–3076.
January 29, 4–7 p.m	Miles Community College—Room 106, 2715 Dickinson, Miles City, MT.	Jody Weil (406) 896–5258.
January 31, 4–7 p.m	Elks Lodge 604 Coburn Avenue, Worland, WY	Janine Terry (307) 347–5194.
February 5, 5–8 p.m	Sacred Heart Parish Hall, 507 East 4th Street, Alturas, CA.	Jennifer Purvine (530) 233–7932.
February 11, 5–8 p.m	U.S. Forest Service, Helena National Forest Headquarters, 2880 Skyway Drive, Helena, MT (across from airport).	Jody Weil (406) 896–5258.
February 13, 6–9 p.m	Vista Inn, 2645 Airport Way Boise, ID	Barry Rose (208) 373–4014.
February 14, 6–9 p.m	College of Southern Idaho, 315 Falls Ave, Shields Bldg, Room 117, Twin Falls, ID.	Eddie Guerrero (208) 736–2355.
February 19, 4–7 p.m	BLM-Nevada State Office, 1340 Financial Blvd., Reno, NV.	JoLynn Worley (775) 861–6515.
February 21, 2–5 p.m. and 6–9 p.m	Hilton Garden Inn, 3650 East Idaho Street, Elko, NV	Mike Brown (775) 753–0200.
February 26, 5–8 p.m	Holiday Inn Select, 801 Truxton Ave,Bakersfield, CA	Stephen Larson (661) 391–6099.
February 28, 6–9 p.m	Valley Library, 12004 East Main, Spokane, WA	Kathy Helm (509) 536–1252.
March 4, 6–9 p.m	Days Inn City Center, 1414 SW 6thPortland, OR	Chris Strebig (503) 952–6003.
March 6, 3–6 p.m	Anchorage Field Office—BLM, 6881 Abbott Loop Road, Anchorage, AK.	Gene Terland (907) 271–3344.
March 12, 9 a.m.–12 noon	Washington Plaza Hotel, Franklin Room, 10 Thomas Circle (Massachusetts and 14th Street), Washington, D.C..	Sharon Wilson (202) 452–5130.

ADDRESSES: For further information, to provide written comments, or to be placed on the mailing list, contact Brian Amme, Acting Project Manager, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520–0006; E-mail *brian__amme@nv.blm.gov;* telephone (775) 861–6645. Comments will be available for public inspection at the BLM Nevada State Office, 1340 Financial Blvd.; Reno, Nevada 89502.

Individual respondents may request confidentiality. If you wish your name and/or address withheld from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written or e-mailed comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: This national, programmatic EIS will provide a comprehensive cumulative analysis of BLM conservation and restoration treatments involving vegetation communities, watersheds and wildlife habitats.

- It will also consider state-specific, reasonably foreseeable activities, including hazardous fuels reduction treatments.
- It will address human health risk assessments for proposed use of new chemicals on public lands.
- Restoration activities may include but are not limited to prescribed fire, riparian restoration, native plant community restoration, invasive plants and noxious weeds treatments, understory thinning, forest health treatments, or other activities related to restoring fire-adapted ecosystems.

The EIS is not a land-use plan or a land-use plan amendment. It will provide a comprehensive programmatic NEPA document to allow effective tiering and serve as a baseline cumulative impact assessment for other new, revised or existing land use and activity level plans that involve vegetation, wildlife habitat and watershed treatment, modification or maintenance.

- This EIS will consolidate four existing BLM vegetation treatment EISs developed in compliance with the NEPA between 1986 and 1992 into one programmatic document for the western United States, including Alaska. The EIS will update information and change to reflect new information and changed conditions on public lands since that time.
- An updated EIS is necessary for BLM to analyze proposed treatments of 4 to 5 million acres of prescribed and managed natural fire, Integrated Weed Management, hazardous fuels reduction, Emergency Stabilization and Restoration, and landscape-level restoration initiatives such as Great Basin Restoration Initiative. Current average annual acres of treatment selected in the existing BLM records of decision (RODS) equate to about 350,000 acres.
- The analysis area includes only surface estate public lands administered by 11 BLM state offices: Alaska, Arizona, California, Eastern States, Idaho, Montana (Dakotas), New Mexico (Oklahoma/Texas/Nebraska), Nevada, Oregon (Washington), Utah and Wyoming.

The BLM has initially identified the following issues for analysis in this programmatic EIS: hazardous fuels reduction and treatment including mechanical treatments, wildlife habitat improvement, restoration of ecosystem processes; protection of cultural resources, watershed and vegetative community health, new listings of threatened and endangered species and consideration of other sensitive and special status species, new chemical formulations for herbicides deemed to be more environmentally favorable, smoke management and air quality, emergency stabilization and restoration, and watershed and water quality improvement.

Dated: December 10, 2001.

Henri Bisson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 01–32232 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–1020–PG]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Butte, Dillon, and Missoula Field Offices, Interior.

ACTION: Notice of meeting.

SUMMARY: The Western Montana Resource Advisory Council will have a meeting on January 15, 2002, at the BLM—Butte Field Office Conference Room, 106 North Parkmont, Butte, Montana starting at 9 a.m. Primary agenda topics include orientation for new members and the Dillon Resource Management Plan.

The meeting is open to the public and the public comment period is set for 11:30 a.m. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Hotaling, Butte Field Office Manager and Designated Federal Official, (406) 533–7600.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: November 21, 2001.

Scott Powers,

Dillon Field Manager.

[FR Doc. 01–32128 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–00–1020–24]

Mojave Southern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Mojave Southern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Mojave Southern Great Basin Resource Advisory Council (RAC), Nevada, will be held as indicated below. Topics for discussion will include manager's reports of field office activities; an update on the Southern Nevada Public Land Management Act of 1998; and other topics the council may raise.

All meetings are open to the public. The public may present written and/or

oral comments to the council at 2:30 p.m. on Thursday, January 17, 2002. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations should contact Phillip Guerrero at (702) 647–5046 by January 11, 2002.

DATES & TIME: The RAC will meet on Thursday, January 17 and Friday January 18, 2002 at the Red Rock Canyon National Conservation Area Visitors Center Friends Room from 8:30 a.m. to 4 p.m. daily.

FOR FURTHER INFORMATION CONTACT: Phillip L. Guerrero, Public Affairs Officer, BLM Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, NV 89108, or by phone at (702) 498–6088.

Dated: December 5, 2001.

Phillip L. Guerrero,

Public Affairs Officer, Las Vegas Field Office.

[FR Doc. 01–32129 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1410–PG]

Notice of Meeting

December 6, 2001.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Alaska Resource Advisory Council meeting.

SUMMARY: The BLM Alaska Resource Advisory Council will conduct an open meeting Thursday, January 31, 2002, from 9:30 a.m. until 4 p.m. and Friday, February 1, 2002, from 8:30 a.m. until noon. The meeting will be held at the Campbell Creek Science Center, 6881 Abbott Loop Road, Anchorage.

Primary agenda items for the meeting include land use planning starts in Alaska and scoping for the northwest National Petroleum Reserve—Alaska and Colville River multiple use activity plans. The council will hear public comments Thursday, January 31, from 1–2 p.m. Written comments may be mailed to BLM at the address below.

ADDRESSES: Inquiries or comments should be sent to BLM External Affairs, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, 907–271–3322, or via E-mail to *teresa__mcpherson@ak.blm.gov.*

Linda S.C. Rundell,

Associate State Director.

[FR Doc. 01–32130 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1020–PG]

Notice of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Upper Snake River District Resource Advisory Council Meeting: Location andTimes.

SUMMARY: The next Upper Snake River District Resource Advisory Council (RAC) Meeting will be held on February 27, 2002, beginning at 1 p.m., and February 28, 2002, beginning at 8 a.m. The meeting will be held at the Best Western Burley Inn, 800 N Overland Avenue in Burley, Idaho.

SUPPLEMENTARY INFORMATION: The RAC meets in accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA),5 U.S.C. The Upper Snake River District RAC will discuss scoping topics for the upcomingFire Management Direction Plan Amendments (FMDPA). The FMDPA will amend 12 land use plans in the district for hazardous fuels management. The RAC will also discuss the results of scoping for the Craters of the Moon National Monument ExpansionGeneral/Resource Management Plans. All meetings are open to the public. Each formal council meeting has time allocated for hearing public comments, and the public may present written or oral comments. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact the address below.

FOR FURTHER INFORMATION: David Howell at the Upper Snake River District Office, 1405 Hollipark Dr., Idaho Falls, ID 83401, or telephone (208) 524–7559.

Dated: December 6, 2001.

James E. May,

District Manager.

[FR Doc. 01–32131 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–200–1020–00]

Science Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Land Management (BLM) announces a public meeting of the Science Advisory Board to discuss DOI science goals, update recent BLM science initiatives, receive a briefing on the President's Energy Plan, and to discuss science and management of the National Landscape Conservation System units.

DATES: BLM will hold the public meeting on Friday, February 8, 2002, from 9 a.m. to 5 p.m. local time.

ADDRESSES: BLM will hold the public meeting at the Four Points Sheraton, Cottonwood Room, 10220 North Metro Parkway, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Lee Barkow, Bureau of Land Management, Denver Federal Center, Building 50, PO Box 25047, Denver, CO 80225–0047, 303–236–6454.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463).

I. The Agenda for the Public Meeting Is as Follows

9 a.m. Introduction and Opening Remarks
9:30 a.m. DOI Science Goals
10:30 a.m. Update on Recent BLM Science Initiatives
1 p.m. Briefing on the President's Energy Plan
2:45 p.m. The National Landscape Conservation System—A Discussion on Science and Management of the Units
4 p.m. Open Discussion by the Board and Drafting of Recommendations to the Director

II. Public Comment Procedures

Participation in the public meeting is not a prerequisite for submittal of written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on BLM's use of science are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, commenters should submit two copies of their written comments, where practicable. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom on Information Act (FOIA)

for a copy of your comments, we intend to make them available in their entirety, including your name and address (or your e-mail address if you file electronically). However, if you do not want us to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. We will honor your wish to the extent allowed by the law. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or business will be in their entirety, including names and addresses (or e-mail addresses).

Electronic Access and Filing Address: Commenters may transmit comments electronically via the Internet to: lee_barkow@blm.gov. Please include the identifier ''Science4'' in the subject of your message and your name and address in the body of your message.

III. Accessibility

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the hearing, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listedunder **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled hearing date. Although BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Lee Barkow,

National Science and Technology Center.

[FR Doc. 01–32125 Filed 12–31–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 31896]

Notice of Proposed Withdrawal; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service proposes to withdraw 20 acres of National Forest System land to protect the Federal investment in the Rocky Mountain Research Station. This notice segregates the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may by law be made of National Forest System land.

DATES: Comments should be received on or before April 2, 2002.

ADDRESSES: Comments should be sent to the Forest Supervisor, Coconino National Forest, 2323 E. Greenlaw Lane, Flagstaff, Arizona 86004.

FOR FURTHER INFORMATION CONTACT: Pete Mourtsen, Coconino National Forest, 928–527–3414.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Coconino National Forest,

Gila and Salt River Meridian,

T. 21 N., R. 7 E.,
sec. 27, S½NW¼NW¼.

The area described contains 20 acres in Coconino County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor of the Coconino National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request, by the date specified above, to the Forest Supervisor, Coconino National Forest. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: December 2, 2001.

Steve J. Gobat,

Acting Deputy State Director, Resources Division.

[FR Doc. 01–32127 Filed 12–31–01; 8:45 am]

BILLING CODE 3410–11–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–741–743 (Review)]

Melamine Institutional Dinnerware From China, Indonesia, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on melamine institutional dinnerware from China, Indonesia, and Taiwan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on melamine institutional dinnerware from China, Indonesia, and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is February 21, 2002. Comments on the adequacy of responses may be filed with the Commission by March 18, 2002. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://*

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 02–5–067, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

www.usitc.gov). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

On February 25, 1997, the Department of Commerce issued antidumping duty orders on imports of melamine institutional dinnerware from China, Indonesia, and Taiwan (62 FR 8426). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China, Indonesia, and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as melamine institutional dinnerware.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as producers of melamine institutional dinnerware.

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the Order Date is February 25, 1997.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR § 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 21, 2002. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is March 18, 2002. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation

of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in each Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1996.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 20001 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s'') operations on that product during calendar year 2001 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each Subject Country accounted for by your firm's(s'') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from each Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s'') operations on that product during calendar year 2001 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each Subject Country accounted for by your firm's(s'') production; and

(b) the quantity and value of your firm's(s'') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each Subject Country accounted for by your firm's(s'') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in each Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in each Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published

pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 20, 2001.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–32246 Filed 12–31–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CER part 50.7, notice is hereby given that on November 7, 2001, a proposed Consent Decree in *United States* v. *Aristech Chemical Corporation,* Civil Action No. C–1–01–772, was lodged with the United States District Court for the Southern District of Ohio, Western Division.

In this action the United States seeks civil penalties and injunctive relief against Aristech Chemical Corporation (''Aristech'') pursuant to section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b) (1983), *amended by,* 42 U.S.C. 7413(b) (Supp. 1991), for alleged violations at Aristech's Ironton, Ohio facility. Under the settlement, Aristech will pay a civil penalty of $450,000, and apply for and obtain a permit for the Phenol Expansion Project, under the CAA's Prevention of Significant Deterioration (''PSD'') program, from the State of Ohio, the permitting authority.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Aristech Chemical Corporation,* D.J. Ref. 90–5–2–1–06701/1.

The Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Ohio, Western Division, Potter Stuart Federal Courthouse, 5th and Walnut Streets, Room 220, Cincinnati, Ohio 45202, and at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $7.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources, Division.

[FR Doc. 01–32223 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on December 20, 2001, a proposed Complaint and Consent Decree in *United States* v. *Conoco Inc.,* Civil Action No. H–01–4430, was lodged with the United States District Court for the Southern District of Texas.

In this action the United States sought civil penalties and injunctive relief against Conoco Inc. (''Conoco'') pursuant to Section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b) (1983), *amended by,* 42 U.S.C. 7413(b) (Supp. 1991), alleged violations at Conoco's 4 refineries in Colorado, Montana, Oklahoma and Louisiana. Under the settlement, Conoco will implement innovative pollution control technologies to greatly reduce emissions of nitrogen oxides (''No_X'') and sulfur dioxide (''SO2'') from refinery process units and adopt facility-wide enhanced monitoring and fugitive emission control programs. In addition, Conoco will pay a civil penalty of $1.5 million and spend $5.5 million on supplemental and beneficial environmental projects. The states of Colorado, Montana, Oklahoma and Louisiana will join in this settlement as a signatories to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Conoco Inc.,* D.J. Ref. 90–5–2–1–07295/1.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Texas, U.S. Courthouse, 515 Rusk, Houston, Texas 77002, and at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $36.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32222 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on December 20, 2001 a proposed Consent Decree (''Decree'') in *United States* v. *Conoco, Inc.* Civil Action No. 01–2478, was lodged with the United States District Court for the District of Colorado.

The proposed consent resolves claims for civil penalties and permanent injunctive relief for violation of the National Emission Standards for Hazardous Air Pollutants (''NESHAP'') requirements of section 112 of the CAA, 42 U.S.C. 7412, and the implementing regulations pertaining to petroleum refineries found at 40 CFR part 63, subpart CC, at Conoco's petroleum refinery located at 5801 Brighton Blvd. in Commerce City, Co.

Under the terms of the decree Conoco will pay a civil penalty of $38,775.20, and comply with all performance test and reporting requirements applicable to the flares. Conoco will also complete two supplemental environmental projects, at a cost of no less than $130,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, Suite 945NT, Denver, Co 80202, and should refer to *United States* v. *Conoco, Inc.,* D.J. Ref. 90–5–2–1–07295.

The Decree may be examined at the offices of the EPA Library, EPA Region VIII, located at 999 18th Street, First Floor, Denver, Colorado 80202. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy of the Decree, please enclose a check payable to the Consent Decree Library for $8.50 for a complete

copy of the decree (25 cents per page, reproduction cost).

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32224 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Loding of Consent Decree

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Honeywell International Inc.* (E.D. Va.), Civil Action No. 3:01CV789 was lodged on November 23, 2001 with the United States District Court for the Eastern District of Virginia. The Consent Decree resolves the United States' claims against defendant, Honeywell International Inc., with respect to violations of the Clean Air Act, the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), the Emergency Planning and Community Right-to-Know Act (''EPCRA''), and the Resource Conservation and Recovery Act (''RCRA'') at its chemical manufacturing facility in Hopewell, Virginia.

Under the Consent Decree, defendant will pay the United States $110,000 in penalties. In addition, the defendant will implement five Supplemental Environmental Projects, or ''SEPs,'' at an estimated cost of $772,000. These SEPs include (1) within ten months of entry of the Consent Decree and at a cost of no less than $375,000, the conversion of a refrigeration unit from use of chlorfluorocarbon-based refrigerant to hydrofluorocarbon-based refrigerant; (2) within seventeen months of entry of the Consent Decree and at a cost of no less than $300,000, the installation of an air emissions control system to reduce the release of ammonia; (3) within forty-five (45) days of entry of the Consent Decree and at a cost of no less than $35,000, the purchase of a ''reverse 911'' interactive notification system for the Hopewell Local Emergency Planning Committee; (4) within forty-five (45) days of entry of the Consent Decree and at a cost of no less than $20,000, the purchase of a skirted boom and trailer and associated training services for the Henrico Regional Hazardous Incident Team; and (5) within forty-five (45) days of entry of the Consent Decree and at a cost of no less than $42,000, the purchase of mass decontamination equipment and associated training for emergency response teams at two local medical centers, the John Randolph Medical Center in Hopewell, VA and the Southside Regional Medical Center in Petersburg, VA.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Honeywell International, Inc.,* DOJ reference number 90–7–1–06900.

The proposed Consent Honeywell may be examined at the Office of the United States Attorney, 600 East Main Street, Suite 1800, Richmond, Virginia; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania. A copy of the proposed decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $13.00 ($.25 per page for production costs), payable to the Consent Decree Library.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32219 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Clean Air Act

Notice is hereby given that a consent decree in *United States* v. *Kenneth McDonald and Nicholas Menegatos*, C.A. No. 3:CV–01–0510, was lodged on September 11, 2001, with the United States District Court for the Middle District of Pennsylvania. This notice was previously published in the **Federal Register** on October 4, 2001 and the public was given 30 days to comment. No comments were received. However, because of severe disruption in the mail service, the United States is unable to conclude with certainty that any comments mailed in response to that notice would have been received. As a result, the United States is providing this opportunity for any prior persons who previously submitted comments to resubmit their comments as directed below.

The consent decree resolves the United States' claims against Defendant Nicholas Menegatos for violations of the Clean Air Act, 42 U.S.C. 7401–7671q, and the National Emission Standards for Hazardous Air Pollutants for asbestos (''asbestos NESHAP''), 40 CFR part 61, with respect to the partial demolition of a facility, located in Tannersville, Pennsylvania.

Under the consent decree, Defendant Menegatos, based upon his ability-to-pay, has agreed to pay a civil penalty in the amount of $2700 and has agreed to take a training course that will familiarize him with the Clean Air Act and the asbestos NESHAP regulations.

The Department of Justice will receive, for a period of twenty (20) days from the date of this publication, comments relating to the proposed consent decree. Comments previously submitted by mail should be resubmitted to the Acting Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Kenneth McDonald and Nicholas Menegatos*, C.A. No. 3:CV–01–0510, DOJ Reference No. 90–5–2–1–2217. The comments should be faxed to the Acting Assistant Attorney General at 202/616–6583.

The proposed consent decree may be examined at the Office of the United States Attorney, 228 Walnut Street, Harrisburg, Pennsylvania 17108; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.75 (.25 cents per page production costs), payable to the Consent Decree Library.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32218 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with 28 CFR 50.7, the Department of Justice gives notice that a proposed consent decree in *United States* v. *Mobil Oil Corporation,* No. CV–96–1432 (E.D.N.Y), was lodged with the United States District Court for the Eastern District of New York on December 13, 2001, pertaining to the

payment of a civil penalty, compliance and other injunctive relief, and implementation of a supplemental environmental project in connection with the Mobil Oil Corporation's (''Mobil'') violations of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.,* at the Port Mobil facility in Staten Island, New York City, New York.

Under the proposed consent decree, Mobil will pay a civil penalty of $8.2 million, will agree to comply with RCRA at the Port Mobil facility and implement corrective action as directed by the U.S. Environmental Protection Agency, will agree to refrain from making certain legal arguments under specified circumstances, and will agree to implement a supplemental environmental project—purchasing land for preservation in the Staten Island or New York city harbor area—at a cost of at least $3 million. The Consent Decree includes a release of claims alleged in the complaint.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comment should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Mobil Oil Corporation,* No. CV–96–1432 (E.D.N.Y.), and DOJ Reference No. 90–7–1–794. Commenters may request an opportunity for a public meeting in the affected area, in accordance with RCRA Section 7003(d), 42 U.S.C. 6973(d).

The proposed consent decree may be examined at: (1) the Office of the United States Attorney for the Eastern District of New York, One Pierrepoint Plaza, Brooklyn, New York 11201, (718) 254–7000; and (2) the United States Environmental Protection Agency (Region 2), 290 Broadway, New York 10007 (contact Stuart Keith in the office of Regional Counsel). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $6.00 (24 pages at 25 cents per page reproduction costs), may payable to the Consent Decree Library.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32221 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

Notice is hereby given that a proposed Consent Decree *United States, et al.* v. *Montrose Chemical Corporation of California, et al.,* No. CV 90–3122–R (C.D. Cal), was lodged on December 21, 2001 with the United States District Court for the Central District of California.

The consent decree resolves claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended, brought against defendants Montrose Chemical Corporation of California (''Montrose''), Aventis CropScience USA, Inc., Chris-Craft Industries, Inc. (now News Publishing Australia Ltd., by merger), and Atkemix Thirty-Seven, Inc. (now Stauffer Management Company, LLC, by merger) (collectively, the ''DDT Defendants''), for response costs incurred and to be incurred by the United States Environmental Protection Agency in connection with responding to the release and threatened release of hazardous substances at the ''Current Storm Water Pathway.'' The Current Storm Water Pathway consists of the following system of man-made storm water conveyances: the Kenwood Drain, the Torrance Lateral, the Dominguez Channel (from Laguna Dominguez, the most northern point of tidal influence in the Dominguez Channel, to the Consolidated Slip), and the portion of the Los Angeles Harbor known as the Consolidated Slip from the mouth of the Dominguez Channel south to but not extending beyond Pier 200B and 200Y.

The proposed consent decree requires the DDT Defendants to pay $1.4 million to the United States Environmental Protection Agency, $50,000 to the California Department of Toxic Substances Control, and $450,000 to the California Regional Water Quality Control Board, Los Angeles Region, which commits to spend this money on the Current Storm Water Pathway only. The consent decree includes a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044; and refer to *United States, et al.* v. *Montrose Chemical Corporation of California, et al.,* No. CV 90–3122–R (C.D. Cal), and DOJ Ref. #90–11–3–511/3.

The proposed settlement agreement may be examined at the Office of the United States Attorney, Central District of California, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012; and the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $9.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32220 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on December 20, 2001, a Consent Decree in *United States, et al.* v. *Navajo Refining, Co., et al.,* Civil Action No. Civ–01–1422 LH/LCS, was lodged with the United States District Court for the District of New Mexico.

In a complaint that was filed simultaneously with the Consent Decree, the United States sought injunctive relief and penalties against Navajo Refining Company ('Navajo'') and Montana Refining Company ('Montana Refining''), pursuant to

section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b) (1983), *amended by,* 42 U.S.C. 7413(b) (Supp. 1991) for alleged CAA violations at Navajo's two refineries in Artesia and Lovington, New Mexico, and at Montana Refining's refinery in Great Falls, Montana.

Under the settlement, Navajo and Montana Refining will implement innovative pollution control technologies to greatly reduce emissions of nitrogen oxides (''NO_X'') and sulfur dioxide (''SO_2'') from refinery process units and they will adopt facility-wide enhanced monitoring and fugitive emission control programs. In addition, Navajo and Montana Refining will pay a civil penalty of $400,000 for settlement of the claims in the United States' complaint, and Navajo will pay $350,000 for settlement of claims raised by the State of New Mexico in two compliance orders that New Mexico issued to Navajo in May and July of 2001. Navajo also will perform environmentally beneficial projects totaling approximately $1.4 million. The States of New Mexico and Montana will join in this settlement as signatories to the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.,* v. *Navajo Refining Co., et al.* D.J. Ref. 90–5–2–1–2228/1.

The Consent Decree may be examined at the Office of the United States Attorney, 201 3rd St., NW., Suite 900, Albuquerque, New Mexico, 87102, and at U.S. EPA Region 6, Fountain Place, 1445 Ross Avenue, Dallas, TX 75202. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $53.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32216 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a consent decree in *United States* v. *Sequa Corporation and John H. Thompson*, C.A. No. 01–CV–4784 (E.D.Pa.), was lodged on September 20, 2001, with the United States District Court for the Eastern District of Pennsylvania. This notice was previously published in the **Federal Register** on October 15, 2001 and the public was given 30 days to comment. No comments were received. However, because of severe disruption in the mail service, the United States is unable to conclude with certainty that any comments mailed in response to that notice would have been received. As a result, the United States is providing this opportunity for any persons who previously submitted comments to resubmit their comments as directed below.

The consent decree resolves the United States' claims against defendants Sequa Corporation (''Sequa'') and John H. Thompson (''Thompson'') with respect to past response costs incurred through September 30, 1999, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 41 U.S.C. 9607. The costs were incurred in connection with the Dublin TCE Site, located in the Borough of Dublin, Bucks County, Pennsylvania. Defendant Thompson owns the Site property, or a portion thereof, and defendant Sequa conducted manufacturing activities at the Site, which became contaminated with trichloroethylene.

Under the consent decree, defendants will pay the United States $3,200,000 in reimbursement of past response costs incurred in connection with the Site. Said amount will be paid within thirty (30) days after entry of the consent decree by the Court.

The Department of Justice will receive, for a period of twenty (20) days from the date of this publication, comments relating to the proposed consent decree. Any persons who previously submitted comments should resubmit and address their comments to the Acting Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sequa Corporation and John H. Thompson*, DOJ Reference No. 90–11–2–780. The comments should be faxed to the Acting Assistant Attorney General at 202/616–6583. Alternatively, the comments may be mailed to the Office of the United States Attorney, ATTN: Barbara Rowland, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania 19106.

The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania 19106; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania. A copy of the proposed decree may be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.75 (.25 cents per page production costs), payable to the Consent Decree Library.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–32217 Filed 12–31–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,039]

Fashion International A.D.M. Services, Inc. Scranton, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 7, 2001, applicable to workers of Fashion International located in Scranton, Pennsylvania. The notice was published in the **Federal Register** on June 27, 2001 (66 FR 34256).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Company information shows that worker separations occurred at A.D.M. Services, Inc. when it closed in March, 2001. A.D.M. Services provided designing services and markers supporting the production of men's sport coats and men's and ladies' blazers at Fashion International, Scranton, Pennsylvania which also closed in March, 2001. A.D.M. Services, Inc. workers were inadvertently omitted from the certification.

The intent of the Department's certification is to include all workers of Fashion International who were adversely affected by increased imports of men's sport coats and men's and ladies' blazers.

Accordingly, the Department is amending the certification to cover the workers of A.D.M. Services, Inc., Scranton, Pennsylvania.

The amended notice applicable to TA–W–39,039 is hereby issued as follows:

''All workers of Fashion International and A.D.M. Services, Inc., Scranton, Pennsylvania who became totally or partially separated from employment on or after February 24, 2001, through June 7, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 13th day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32209 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 14, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 14, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 10th day of December, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 12/10/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,396	Lady Ester Lingerie (Co.)	Berwick, PA	10/24/2001	Lingerie, Sleepwear.
40,397	Lorber Industries (Co.)	Snyder, TX	10/22/2001	Cotton Yarn.
40,398	R.G. Barry Texas LP (Co.)	San Angelo, TX	11/20/2001	Soles for Slippers.
40,399	Hermes Floral (Wrks)	Becker, MN	10/17/2001	Cut Flowers.
40,400	Meridian Automotive (UAW)	Centralia, IL	10/18/2001	Fiberglass Auto Parts.
40,401	ASARCO, Inc. TN Mines Div (Wrks)	Strawberry Plns, TN	11/20/2001	Zinc Concentrate.
40,402	Prime Tanning Corp (UFCW)	St. Joseph, MO	10/24/2001	Wet Blue Leather.
40,403	Gen Corp (GDX) (USWA)	Marion, IN	11/28/2001	Vehicle Sealing.
40,404	Fender Musical Instrument (Co.)	Westerly, RI	10/19/2001	Guitars.
40,405	Xerox Corp. (UNITE)	Canandaigua, NY	11/27/2001	Ink Jet Printhead Cartridges.
40,406	VF Jeanswear (Co.)	Oneonta, AL	11/27/2001	Ladies' Jeans.
40,407	TRW Automotive Braking (USWA)	Milford, MI	11/27/2001	Automotive Braking Systems.
40,408	Carrier Corp (Wrks)	Conway, AR	10/19/2001	Commercial Refrigeration Products.
40,409	Bogner of America, Inc. (Co.)	Newport, VT	11/21/2001	Men's and Ladies' Ski Parkas.
40,410	Thyssen Mining (Wrks)	Nye, MT	11/27/2001	Platinum and Paladium.
40,411	Bowen Machine (Co.)	El Paso, TX	11/19/2001	Construction Labor and Equipment.
40,412	Alcatel USA (Co.)	Andover, MA	11/28/2001	Network Switch (7420 Router).
40,413	Mikes, Inc. (Co.)	South Roxana, IL	11/13/2001	Rods for Diesel Engines.
40,414	Catawissa Lumber (Co.)	West Jefferson, NC	11/28/2001	Hardwood Furniture.
40,415	Pressman Gutman Co., Inc (Co.)	New York, NY	10/25/2001	Textile Piece Goods
40,416	Schaffstall Manufacturing (Wrks)	North Collins, NY	10/24/2001	Components For Xerox Copy Machines.
40,417	NTN Bower Corp (Wrks)	Hamilton, AL	10/18/2001	Tapered Roller Bearings.
40,418	Wood and Hyde Leather (Wrks)	Gloversville, NY	10/17/2001	Finished Leather.
40,419	Flextronics International (Wrks)	Portsmouth, NH	10/09/2001	Electronic Circuit Boards.
40,420	International Wire Group (Co.)	Pine Bluff, AR	10/02/2001	Shielding Wire.
40,421	Exide Technologies (UAW)	Shreveport, LA	11/27/2001	Batteries—Automobile.
40,422	Crown Marking Equipment (Co.)	Warrington, PA	10/24/2001	Plastic Self Inking Rubber Stamp.
40,423	Wells Lamont Industry (Co.)	Warsaw, IN	10/24/2001	Terry Cloth Gloves.
40,424	Georgia Pacific (Wrks)	Superior, WI	12/03/2001	Superior Hardboard.
40,425	Tenneco Automative (Co.)	Ligonier, IN	11/26/2001	Exhaust Systems.
40,426	Gilbert Western Co. (Wrks)	Nye, MT	11/28/2001	Construction Workers.
40,427	National Ring Traveler Co (Wrks)	Pawtucket, RI	11/21/2001	Jewelry Chains.
40,428	Sunlite Casual Furniture (Krs)	Paragould, AR	12/04/2001	Outdoor Patio Furniture.

[FR Doc. 01–32205 Filed 12–31–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,333]

Lynchburg Foundry Company, Radford, VA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 5, 2001 in response to a worker petition which was filed on October 30, 2001 on behalf of workers at Lynchburg Foundry Company, Radford, Virginia. The subject firm is a subsidiary of Intermet Corporation.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–40,060). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 20th day of December 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32207 Filed 12–31–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,387]

STMicroelectronics, Inc. (ST) San Diego, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 3, 2001, in response to a petition filed by a company official on behalf of workers at STMicroelectronics, Inc., San Diego, California.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 21st day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32208 Filed 12–31–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,645]

Texel USA, Inc., Henderson, North Carolina; Notice of Revised Determination on Reconsideration

By letter of July 24, 2001, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on July 2, 2001, based on the finding that imports of nonwoven needle punched felts did not contribute importantly to worker separations at the Henderson plant. The denial notice was published in the **Federal Register** on July 20, 2001 (66 FR 38026).

To support the request for reconsideration, the company supplied additional information which helped clarify information that was provided during the initial investigation. The company indicated they shifted subject plant projection to an affiliated plant located in Canada and simultaneously began importing nonwoven needle punched felts back to the United States to serve their domestic customer base during the relevant period. The imports accounted for a meaningful portion of the subject plant production.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Texel USA, Inc., Henderson, North Carolina, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provision of the Act, I make the following certification:

''All workers of Texel USA, Inc., Henderson, North Carolina, who become totally or partially separated from employment on or after January 29, 2000 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, DC this day 11th of December 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–32213 Filed 12–31–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,307]

Universal Furniture Limited, Goldsboro, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 29, 2001 in response to a worker petition which was filed on behalf of workers at Universal Furniture Limited, Goldsboro, North Carolina.

As active certification covering the petitioning group of workers is already in effect (TA–W–38,811A, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 12th day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32211 Filed 12–31–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,811 and TA–W–38,811A]

Universal Furniture Limited, Morristown, Tennessee and Goldsboro, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 30, 2001, applicable to workers of Universal Furniture Limited, Morristown, Tennessee. The notice was published in the **Federal Register** on May 18, 2001 (66 FR 27690).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. Information shows that worker separations occurred at the Goldsboro,

North Carolina location of the subject firm when it closed in March, 2001. The Goldsboro, North Carolina workers were engaged in the production of bedroom and dining room furniture.

Accordingly, the Department is amending the certification to include workers of Universal Furniture Limited, Goldsboro, North Carolina.

The intent of the Department's certification is to include all workers of Universal Furniture Limited who were adversely affected by increased imports.

The amended notice applicable to TA–W–38,811 is hereby issued as follows:

''All workers of Universal Furniture Limited, Morristown, Tennessee (TA–W–38,811) and Goldsboro, North Carolina (TA–W–38,811A) who became totally or partially separated from employment on or after March 10, 2000, through April 30, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC, this 12th day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32212 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[Docket No. [TA–W–38, 495]

VF Imagewear, East (Formerly VF Knitwear) Martinsville, Virginia Including Employees of VF Imagewear East Located in Golden Valley, Minnesota Dallas, Texas, Portland, Oregon, Salisbury, Maryland; Amended Certification Regarding Eligibility To Apply Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1994 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 17, 2001, applicable to workers of VF Imagewear East (formerly VF Knitwear), Martinsville, Virginia. The notice was published in the **Federal Register** on May 3, 2001 (66 FR 22262).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred involving employees of the Martinsville, Virginia facility of VF Imagewear East, (formerly VF Knitwear), located in Golden Valley, Minnesota, Dallas, Texas, Portland, Oregon and Salisbury, Maryland. These employees are engaged in employment related to the production of fleece apparel, including jerseys and T-shirt at the Martinsville, Virginia location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Martinsville, Virginia facility of VF Imagewear East, (formerly VF Knitwear), located in Golden Valley, Minnesota, Dallas, Texas, Portland, Oregon and Salisbury, Maryland.

The intent of the Department's certification is to include all workers of VF Imagewear East (formerly VF Knitwear) adversely affected by increased imports.

The amended notice applicable to TA–W–38, 495 is hereby issued as follows:

''All workers of VF Imagewear East, (formerly VF Knitwear), Martinsville, Virginia, including workers of the Martinsville, Virginia facility located in Golden Valley, Minnesota, Dallas, Texas, Portland, Oregon and Salisbury, Maryland, who became totally or partially separated from employment on or after December 13, 1999, through April 17, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 24th day of December, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32210 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 14, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 14, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 3rd day of December, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted On 12/03/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,376	Wheeling Corrugating Co. (Wkrs)	Kirkwood, NY	11/25/2001	Corrugated Steel Roofing and Siding.
40,377	Dexter Shoe (Co.)	Dexter, ME	11/20/2001	Footwear.
40,378	Chrissann Dress Co. (UNITE)	Franklin Square, NY	10/18/2001	Ladies' Dresses.
40,379	HC Contracting, Inc (UNITE)	New York, NY	10/31/2001	Ladies' Sportswear.
40,380	HLS Fashions Corp (UNITE)	New York, NY	10/31/2001	Ladies' Dresses.

APPENDIX—Continued

[Petitions Instituted On 12/03/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
40,381	Four Seasons Fashion Mfg (UNITE)	New York, NY	10/31/2001	Ladies' Sportswear.
40,382	Corning Asahi Video (AFGWU)	State College, PA	11/25/2001	TV Panels and Tubes.
40,383	New GLI, Inc (Wkrs)	Columbus, IN	06/03/2001	Television Cabinets.
40,384	K.S. Bearing, Inc. (UAW)	Greensburg, IN	11/16/2001	Bushings, Bearings and Washers.
40,385	Steag Hamatech (Wkrs)	Saco, ME	11/20/2001	Unijet DVD.
40,386	Celestica Corporation (Co.)	Milwaukie, OR	11/19/2001	Power Supplies.
40,387	STMicroelectronics (Co.)	San Diego, CA	11/16/2001	Semiconductor Wafers.
40,388	X Fab Texas (Wkrs)	Lubbock, TX	11/15/2001	Micro Chips.
40,389	BP/Amoco Oil (Wkrs)	Chicago, IL	11/26/2001	Exploration & Prod. of Oil and Gas.
40,390	Carlisle Engineered (USWA)	Lake City, PA	10/23/2001	Plastic Injected Molded Parts.
40,391	Deck Bros (USWA)	Buffalo, NY	09/18/2001	Heat Sinks, Bus Bar and Castings.
40,392	A.S. Haight (UNITE)	Cartersville, GA	11/19/2001	Screen Printing Cloth.
40,393	Stylemaster Apparel (Wkrs)	Union, MO	11/27/2001	Hats.
40,394	N and H Corporation (Co.)	Mohnton, PA	11/06/2001	Knit Sportswear.
40,395	Lexmark International (Co.)	Lexington, KY	11/20/2001	Laster and Inkjet Printers, Cartridges.

[FR Doc. 01–32206 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–5506]

Syst-A-Matic Tool and Design, Meadville, PA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on October 29, 2001, in response to a petition filed by the company on behalf of workers at Syst-A-Matic Tool and Design, Meadvile, Pennsylvania.

The petitioning worker group is the subject of an existing NAFTA petition investigation (NAFTA–5471). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 20th day of December 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–32204 Filed 12–31–01; 8:45 am]

BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

1611 Negotiated Rulemaking Working Group Meeting Notice

TIME AND DATE: The Legal Services Corporation's 1611 Negotiated Rulemaking Working Group will meet on January 7–8, 2002. The meeting will begin at 9 a.m. on January 7, 2002. It is anticipated that the meeting will end by 5 p.m. on January 8, 2002.

LOCATION: The meeting will be held in the First Floor Conference Room at the offices of Marasco Newton Group, Inc., 2425 Wilson Blvd., Arlington, VA 22201.

STATUS OF MEETING: This meeting is open to public observation.

CONTACT PERSON FOR INFORMATION: Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 750 First St., NE., 11th Floor, Washington, DC 20001; (202) 336–8817.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Naima Washington at 202–336–8841; *washingn@lsc.gov.*

Dated: December 27, 2001.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 01–32250 Filed 12–31–01; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before February 19, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is

completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by fax to 301–713–6852 or by e-mail to *records.mgt@arch2.nara.gov.* Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael Miller, Director, Modern Records Programs (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: *records.mgt@arch2.nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Agricultural Research Service (N1–310–98–2, 2 items, 2 temporary items). Analytical reports and related materials pertaining to the evaluation of pesticides and commodities for potential benefits and risks under the National Agricultural Pesticide Impact Program. Also included are electronic copies of records created using electronic mail and word processing.

2. Department of the Army, Agency-wide (N1–AU–02–2, 2 items, 2 temporary items). Records relating to the receipt, storage, maintenance, and disposition of installed property and facilities engineering stock. Included are vouchers, stock record cards, purchase orders, property turn-in slips, and inventory adjustment reports. Also included are electronic copies of documents created using electronic mail and word processing. The schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of Commerce, Emergency Steel Loan Guarantee Board and Emergency Oil and Gas Guaranteed Loan Board, (N1–40–01–3, 6 items, 4 temporary items). Loan guarantee records, including electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of program correspondence and files of Board meeting minutes and testimony.

4. Department of Defense, Joint Staff (N1–218–00–3, 42 items, 36 temporary items). Records relating to personnel and payroll matters accumulated by the Joint Staff and combatant commands. Records relate to such matters as directives, general personnel and payroll administration, civilian employment, merit pay, pay differentials and allowances, retirement operations, displaced employee programs, equal employment opportunity surveys, labor management relations, promotions and demotions, military awards and assignments, training, time and attendance, and employee political activities. Also included are electronic copies of documents created using electronic mail and word processing and electronic systems maintained at combatant commands that feed into systems maintained at higher levels. Recordkeeping copies of records documenting such matters as decorations to civilians and foreign nationals, military awards, nominations for promotion submitted to the Secretary of Defense, casualty reporting, and training and education programs are proposed for permanent retention.

5. Department of Defense, Defense Information Systems Agency (N1–371–02–1, 4 items, 4 temporary items). Records relating to the Defense Department's Public Key Infrastructure program. Included are paper copies and scanned images of completed forms documenting subscriptions to the Department of Defense Public Key Infrastructure and related actions. Also included are electronic copies of documents created using electronic mail and word processing.

6. Department of Defense, Defense Contract Audit Agency (N1–372–01–3, 6 items, 6 temporary items). Records pertaining to the management of the agency Web site. Included are policies and procedures, Web site usage statistics, and recurring reports. Also included are electronic copies of documents created using electronic mail and word processing. This schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of Defense, National Reconnaissance Office (N1–525–02–1, 11 items, 10 temporary items). Audit files, posters covering routine events and subjects, poster production materials, equipment and property accounting files, certification authority records, and application system security files. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are posters relating to mission-related subjects, such as agency facilities, operations, achievements, and historical commemorations.

8. Department of Energy, Office of the Executive Secretariat (N1–434–00–5, 4 items, 4 temporary items). Correspondence from the general public addressed to the President of the United States relating to energy that has been

forwarded to the agency for response as well as public correspondence addressed to the Secretary of Energy. Also included are electronic copies of documents created using electronic mail and word processing.

9. Department of the Interior, National Park Service (N1–79–01–1, 2 items, 2 temporary items). Administrative case files accumulated by the Historic American Buildings Survey/Historic American Engineering Record relating to efforts to document endangered structures. Also included are electronic copies of records created using electronic mail and word processing.

10. Department of State, Bureau of Human Resources (N1–59–00–11, 15 items, 13 temporary items). Records relating to performance evaluations of agency employees and the granting of awards, including subject files and tracking databases. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of general subject files documenting the performance evaluation of Foreign Service Officers and promotion board meeting files.

11. Department of State, Bureau of Political-Military Affairs (N1–59–01–17, 15 items, 13 temporary items). Records of the Office of International Security Operations relating to such matters as clearances for overflights, foreign employment, medical requests, military exercises, counter-drug operations and deployments, and daily activity reporting. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of subject files on international security operations and files that relate to specific issues, such as human rights, port visits, military exercises, and humanitarian assistance.

12. Department of the Treasury, Bureau of the Public Debt (N1–53–02–1, 10 items, 10 temporary items). Electronic system containing annual maintenance fee information for investor accounts exceeding a threshhold par value. Included are inputs, outputs, master files, and system documentation. Also included are electronic copies of system documentation created using electronic mail and word processing.

13. Department of the Treasury, Bureau of the Public Debt (N1–53–02–2, 8 items, 8 temporary items). Electronic system containing transactional information and verification tables for securities investors conducting purchases or reinvestments via telephone or the Internet. Included are inputs, outputs, master files, and system documentation. Also included are electronic copies of system documentation created using electronic mail and word processing.

14. Tennessee Valley Authority, Fossil Power Group (N1–142–02–2, 3 items, 3 temporary items). Records relating to safety inspections of heavy machinery and equipment. Included are such records as visual inspection checklists, monthly crane safety inspections, and daily truck inspection reports. Also included are electronic copies of documents created using electronic mail and word processing.

Dated: December 19, 2001.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 01–32174 Filed 12–31–01; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 52, ''Early Site Permits (ESP); Standard Design Certifications; and Combined Licenses for Nuclear Power Plants''.

2. *Current OMB approval number:* 3150–0151.

3. *How often the collection is required:* One occasion and every 10 to 20 years for applications for renewal.

4. *Who is required or asked to report:* Designers of commercial nuclear power plants, electric power companies, and any person eligible under the Atomic Energy Act to apply for a construction permit for a nuclear power plant.

5. *The number of annual respondents:* 5—3 applications for Early Site Permits, 1 combined license application, and 1 design certification application.

6. *The number of hours needed annually to complete the requirement or request:* 211,820.

7. *Abstract:* 10 CFR part 52 establishes requirements for the granting of early site permits, certifications of standard nuclear power plant designs, and licenses which combine in a single license a construction permit, and an operating license with conditions (combined licenses), manufacturing licenses, duplicate plant licenses, standard design approvals, and pre-application reviews of site suitability issues. Part 52 also establishes requirements for renewal of these approvals, permits, certifications, and licenses; amendments to them; exemptions from certifications; and variances from early site permits.

NRC uses the information collected to assess the adequacy and suitability of an applicant's site, plant design, construction, training and experience, and plans and procedures for the protection of public health and safety. The NRC review of such information and the findings derived from that information from the basis of NRC decisions and actions concerning the issuance, modification, or revocation of site permits, design certifications, and combined licenses for nuclear power plants.

Submit, by March 4, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/NRC/PUBLIC/OMB/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *BJS1@NRC.GOV.*

Dated at Rockville, Maryland, this 26th day of December, 2001.

For the Nuclear Regulatory Commission.

Beth St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–32215 Filed 12–31–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 31, 2001, January 7, 14, 21,28, February 4, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 31, 2001

There are no meetings scheduled for the Week of December 31, 2001.

Week of January 7, 2002—Tentative

There are no meetings scheduled for the Week of January 7, 2001.

Week of January 14, 2002—Tentative

Tuesday, January 15, 2002

9:30 a.m.

Briefing on Status of Nuclear Materials Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of January 21, 2002—Tentative

There are no meetings schedules for the Week of January 21, 2002.

Week of January 28, 2002—Tentative

Tuesday, January 29, 2002

9:30 a.m.

Briefing on Status of Nuclear Reactor Safety (Public Meeting) (Contact Mike Case, 301–415–1134)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Wednesday, January 30, 2002

9:30 a.m.

Briefing on Status of Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (contact: Jackie Silber, 301–415–7330)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

2:00 p.m.

Discussion of Intragovernmental Issues (Closed—Ex. 1 & 9)

Week of February 4, 2002—Tentative

Wednesday, February 6, 2002

9:30 a.m.

Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

This meeting will be webcast live at the Web address—*www.nrc.gov.*

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov.*

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: December 27, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–32255 Filed 12–28–01; 12:12 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Extension; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549.

Extension: Form N–14, SEC File No. 270–297, OMB Control No. 3235–0336.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form N–14—Registration Statement Under the Securities Act of 1933 for Securities Issued in Business Combination Transactions by Investment Companies and Business Development Companies. Form N–14 is used by investment companies registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''Investment Company Act'') and business development companies as defined by section 2(a)(48) of the Investment Company Act to register securities under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] to be issued in business combination transactions specified in Rule 145(a) (17 CFR 230.145(a)) and exchange offers. The securities are registered under the Securities Act to ensure that investors receive the material information necessary to evaluate securities issued in business combination transactions. The Commission staff reviews registration statements on Form N–14 for the adequacy and accuracy of the disclosure contained therein. Without Form N–14, the Commission would be unable to verify compliance with securities law requirements. The respondents to the collection of information are investment companies or business development companies issuing securities in business combination transactions. The estimated number of responses is 485 and the collection occurs only when a merger or other business combination is planned. The estimated total annual reporting burden of the collection of information is approximately 620 hours per response for a new registration statement, and approximately 350 hours per response for an amended Form N–14, for a total of 257,770 annual burden hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the Commission's mission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 20, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–32201 Filed 12–31–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45183; File No. SR–Phlx–2001–97]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Relating to the Establishment of a Competing Specialist Program

December 21, 2001.

On October 22, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a competing specialist program.

The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on November 13, 2001.[3] No comments were received on the proposal. In this order, the Commission is approving the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, with the requirements of Section 6(b)(5).[5]

The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] because it is designed to perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that a competing specialist program will assist the Exchange in maintaining an efficient and open market.

The Commission approves this proposed rule change provided that the priority of the customer limit order book is preserved by proposed rule 229A consistent with Phlx Rules 218 and 452.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Phlx–2001–97), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–32200 Filed 12–31–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45013 (November 2, 2001), 66 FR 56879.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3866]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Benjamin Brecknell Turner: Rural England Through a Victorian Lens''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Benjamin Brecknell Turner: Rural England Through a Victorian Lens,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY from on or about January 22, 2002 to on or about April 21, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 13, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32226 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3865]

Culturally Significant Objects Imported for Exhibition Determinations: ''Dreaming with Open Eyes: Dada and Surrealist Art From the Vera, Silvia, and Arturo Schwarz Collection in the Israel Museum''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Dreaming with Open Eyes: Dada and Surrealist Art from the Vera, Silvia, and Arturo Schwarz Collection in the Israel Museum,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Fine Arts Museums of San Francisco, San Francisco, CA from on or about February 2, 2002 to on or about April 28, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 13, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32225 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3869]

Culturally Significant Objects Imported for ExhibitionDeterminations: ''Gerhard Richter: Forty Years of Painting''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Gerhard Richter: Forty Years of Painting,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, NY, from on or about February 13, 2002, through May 21, 2002; The Art Institute of Chicago from on or about June 22, 2002, to September 15, 2002; the San Francisco Museum of Modern Art from on or about October 11, 2002, to January 14, 2003; and the Hirshhorn Museum and Scultpure Garden from on or about February 20, 2003, to May 18, 2003, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 21, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32230 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3870]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Orazio and Artemisia Gentileschi: Father and Daughter Painters in Baroque Italy''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Orazio and Artemisia Gentileschi: Father and Daughter Painters in Baroque Italy'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about February 11, 2002, through May 12, 2002, and The St. Louis Art Museum in Missouri, from on or about June 15, 2002, to September 15, 2002, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 21, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32229 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3867]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Reflections of Sea and Light: Paintings and Watercolors by J.M.W. Turner From Tate''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Reflections of Sea and Light: Paintings and Watercolors by J.M.W. Turner from Tate,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Baltimore Museum of Art, Baltimore, MD from on or about February 11, 2002 to on or about May 26, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 13, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32227 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3868]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Treasures of the Russian Czars''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Treasures of the Russian Czars,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at Wonders, Memphis, TN from on or about April 15, 2002 to on or about September 15, 2002, the Kansas International Museum, Topeka, KS from on or about October 15, 2002 to on or about March 15, 2003, and possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 13, 2001.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 01–32228 Filed 12–31–01; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–121]

Determination of Action To Increase Duties on Certain Products of Ukraine Pursuant to Section 301(b): Intellectual Property Laws and Practices of the Government of Ukraine

AGENCY: Office of the United States Trade Representative.

ACTION: Notice

SUMMARY: The United States Trade Representative (Trade Representative) has determined that appropriate action to obtain the elimination of the acts, policies, and practices of the Government of Ukraine that result in the inadequate protection of intellectual property rights includes the imposition of prohibitive duties on the annexed list of Ukrainian products.

EFFECTIVE DATES: A 100 percent *ad valorem* rate of duty is effective with respect to the articles of Ukraine described in the Annex to this notice that are entered, or withdrawn from warehouse, for consumption on or after January 23, 2002. In addition, any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after January 23, 2002 must be admitted as ''privileged foreign status''.

FOR FURTHER INFORMATION CONTACT: Kira Alvarez, Office of Services, Investment and Intellectual Property, Office of the United States Trade Representative (202) 395–6864; David Birdsey, Office of European Affairs, Office of the United States Trade Representative, (202) 395–3320; or William Busis, Office of the General Counsel, Office of the United States Trade Representative, (202) 395–3150. For questions concerning product classification, please contact the General Classification Branch, Office of Regulations and Rulings, U.S. Customs Service, (202) 927–2388, and for questions concerning entries, please contact Yvonne Tomenga, Program Officer, Office of Trade Compliance, U.S. Customs Service, (202) 927–0133.

SUPPLEMENTARY INFORMATION: In a notice published on April 6, 2001 (66 FR 18,346), the Office of the United States Trade Representative (''USTR'') announced the initiation of an investigation under sections 301 to 309 of the Trade Act of 1974, as amended (the Trade Act), regarding the Government of Ukraine's intellectual property protection laws and practices, including the Government of Ukraine's failure to use existing law enforcement authority to stop the ongoing unauthorized production of optical media products and failure to enact an optical media licensing regime that would preclude the piracy of such products. See 66 FR 18,346 (April 6, 2001). In a notice published on August 10, 2001, USTR announced that the Trade Representative had determined that these acts, policies, and practices of Ukraine with respect to the protection of intellectual property rights are unreasonable and burden or restrict United States commerce and are thus actionable under section 301(b) of the Trade Act. See 66 FR 42,246 (Aug. 10, 2001). The notice also announced that the Trade Representative had determined that appropriate action to obtain the elimination of such acts, policies, and practices included the suspension of duty-free treatment accorded to products of Ukraine under the Generalized System of Preferences.

The August 10, 2001 notice announced that further action might include the imposition of prohibitive duties on products of Ukraine to be drawn from a preliminary product list. USTR invited interested persons to submit written comments and to participate in a public hearing on September 11, 2001. Because the development of the final product list involved complex and complicated issues that required additional time, the Trade Representative determined under section 304(a)(3)(B) of the Trade Act to extend the investigation by 3 months, or until December 12, 2001. The public hearing was postponed and held on September 25, 2001. See 66 FR 48,898 (Sep. 24, 2001).

On December 11, 2001, the Trade Representative determined under section 304(a)(1)(B) of the Trade Act that appropriate action under section 301(b), in addition to the prior suspension of GSP benefits, included the imposition of 100 percent *ad valorem* duties on Ukrainian products with an annual trade value of approximately $75 million. The level of sanctions is based on the level of the burden or restriction on U.S. commerce resulting from Ukraine's inadequate protection of U.S. intellectual property rights.

The Ukrainian parliament was scheduled to vote on an Optical Disc Licensing (ODL) law on December 20, 2001, and the Government of Ukraine assured in writing that it would make best efforts to ensure passage of the law. In light of these developments, the Trade Representative determined under section 305(a)(2)(A) of the Trade Act that substantial progress was being made and that a delay was necessary or desirable to obtain a satisfactory solution, and postponed implementation of the action until December 20, 2001.

On December 20, 2001, however, the Ukrainian parliament voted down the ODL law. Consequently, on that same day the Trade Representative announced that he was imposing prohibitive duties on Ukrainian products with an annual trade value of approximately $75 million, and announced the final product list on the following day.

Imposition of Prohibitive Duties

The Trade Representative has determined that appropriate action under section 301(b) of the Trade Act is to impose a 100% *ad valorem* rate of

duty on the articles of Ukraine described in the Annex to this notice, effective with respect to goods entered, or withdrawn from warehouse, for consumption on or after January 23, 2002. Accordingly, effective January 23, 2002, the Harmonized Tariff Schedule of the United States (HTS) is hereby modified in accordance with the Annex to this notice. In addition, any merchandise subject to this determination that is admitted to U.S. foreign-trade zones on or after January 23, 2002 must be admitted as ''privileged foreign status'' as defined in 19 CFR 146.41.

The scope of this action under section 301 is governed by the HTS nomenclature for the preexisting HTS subheadings identified in parentheses for each of the new Chapter 99 subheadings in the Annex to this notice. The verbal product descriptions for the new Chapter 99 subheadings in the Annex are not definitive. Issues regarding the classification of particular products would be decided by the U.S. Customs Service under its usual rules and procedures for product classification.

William L. Busis,

Chairman, Section 301 Committee.

Annex

The Harmonized Tariff Schedule of the United States (HTS) is modified by adding in numerical sequence the following superior text and subheadings to subchapter III of chapter 99 to the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated ''Heading/Subheading'', ''Article Description'', and ''Rates of Duty 1–General'', respectively.

	''Articles the product of Ukraine:	
9903.27.01	Distillate and residual fuel oils (including blended fuel oils) and wastes of distillate and residual fuel oils (whether or not blended) (provided for in subheading 2710.19.05, 2710.19.10,2710.99.05 or 2710.99.10)	100%
9903.27.02	Rare gases, other than argon (provided for in subheading 2804.29.00)	100%
9903.27.03	Germanium oxides and zirconium dioxide (provided for in subheading 2825.60.00)	100%
9903.27.04	Carbides of silicon (provided for in subheading 2849.20.10 or 2849.20.20)	100%
9903.27.05	Other mineral or chemical fertilizers, containing nitrates and phosphates (provided for in subheading 3105.51.00)	100%
9903.27.06	Pigments and preparations based on titanium dioxide (provided for in subheading 3206.11.00 or 3206.19.00)	100%
9903.27.07	Other uncoated, unbleached kraft paper and paperboard, in rolls or sheets, weighing 225 g/m2 or more (provided for insubheading 4804.51.00)	100%
9903.27.08	Other footwear with outer soles of rubber, plastics or composition leather and uppers of leather (provided for in subheading 6403.99.60, 6403.99.75 or 6403.99.90)	100%
9903.27.09	Other footwear with outer soles of rubber or plastics and uppers of textile materials, with open toes or open heels, or of the slip-on type (provided for in subheading 6404.19.35)	100%
9903.27.10	Diamonds, unsorted (provided for in subheading 7102.10.00)	100%
9903.27.11	Diamonds, nonindustrial (provided for in subheading 7102.31.00 or 7102.39.00)	100%
9903.27.12	Catalysts in the form of wire cloth or grill, of platinum (provided for in subheading 7115.10.00)	100%
9903.27.13	Unrefined copper; copper anodes for electrolytic refining (provided for in heading 7402.00.00)	100%
9903.27.14	Other unwrought aluminum alloys (provided for in subheading 7601.20.90)	100%
9903.27.15	Other refrigerating or freezing equipment; heat pumps (provided for in subheading 8418.69.00)	100%''

[FR Doc. 01–32231 Filed 12–31–01; 8:45 am]
BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending December 14, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the applications.

Docket Number: OST–2001–11132
Date Filed: December 10, 2001
Parties: Members of the International Air Transport Association
Subject: PTC3 0528 dated 11 December 2001
Mail Vote 185—Resolution 010q
TC3 Japan, Korea-South East Asia Special Passenger Amending Resolution from Korea (Rep. of) to Chinese Taipei
Intended effective date: 15 December 2001

Docket Number: OST–2001–11163
Date Filed: December 12, 2001
Parties: Members of the International Air Transport Association
Subject:
PTC3 0521 dated 11 December 2001
TC3 Areawide Expedited Resolution 015v r–1
PTC3 0522 dated 11 December 2001
TC3 Within South East Asia Expedited Resolutions r2–r4
PTC3 0523 dated 11 December 2001
TC3 Within South West Pacific Expedited Resolution 002yy r–5
PTC3 0524 dated 11 December 2001
TC3 between South East Asia and South West Pacific
Expedited Resolution 002tt r–6
PTC3 0525 dated 11 December 2001
TC3 between Japan, Korea and South Asian Subcontinent
Expedited Resolution 002xx r–7
PTC3 0526 dated 11 December 2001
TC3 between Japan, Korea and South East Asia ExpeditedResolution 002vv r–8
Intended effective date: 15 January 2002

Docket Number: OST–2001–11175
Date Filed: December 12, 2001
Parties: Members of the International Air Transport Association
Subject: PTC23 EUR–SASC 0083 dated 11 December 2001
TC23 Europe-South Asian Subcontinent Expedited Resolutions
Intended Effective Date: 1 February 2002

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 01–32237 Filed 12–31–01; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 14, 2001

The following applications for certificates of public convenience and

necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's procedural regulations (See 14 CFR 301.201 *et seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period, DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–11156.

Date Filed: December 11, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 2, 2002.

Description: Application of Westjet, pursuant to 49 U.S.C. section 41303, requesting a transfer of the foreign air carrier permit of WestJet Airlines Ltd. to engage in chartered and scheduled foreign air transportation of persons, property and mail between US and Canadian points, operating as ''WestJet.''

Docket Number: OST–2001–11164.

Date Filed: December 12, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 2, 2002.

Description: Application of Caribbean Star Airlines, Inc., pursuant to 49 U.S.C. section 41102 and subpart B, requesting the issuance of a certificate of public convenience and necessity to engage in scheduled and charter foreign air transportation of persons, property and mail between points in Florida and Puerto Rico, on the one hand, and points throughout the Caribbean region, Mexico and Central and South America, on the other hand.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 01–32236 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Yuba and Sutter Counties, State of California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Yuba and Sutter Counties, State of California. The proposed project is called the Third Bridge Crossing of the Feather River.

FOR FURTHER INFORMATION CONTACT:

Mike Bartlett, Chief, Office of Environmental Management, 1303 O Street, 2nd Fl., Sacramento, CA 95814, (916) 324–5150.

Maiser Khaled, Chief, District Operations, Federal Highway Administration, 980 Ninth Street, Suite 400, Sacramento, CA 95814, (916) 498–5020.

SUPPLEMENTARY INFORMATION: The proposed project would construct a freeway system to link SR 65/70 with SR 99 and construct a bridge structure over the Feather River. The east-west freeway link would cross the Feather River south of Marysville (Yuba County) and Yuba City (Sutter County). Located near and within the project area are the communities of Olivehurst, Alicia, Linda, Yuba City and the City of Marysville.

Scoping Process

The project has been in the planning stages since the 1980's. A Notice of Intent was published in December 1989, however, the project was tabled due to lack of funding. In the interim, the California Department of Transportation (Caltrans) has conducted meetings with the public, with local governmental officials and with jurisdictional agencies. A preliminary environmental analysis was performed in June and July 2000. Caltrans with FHWA initiated the NEPA/404 Integration and the Purpose and Need for the project has been reviewed by agencies with jurisdiction. In addition, a series of four workshops was held in the twin-cities area of Yuba City/Marysville in the last three years. One workshop was specifically for the Hmong (Southeast Asian refugees) community of Yuba County, which is in close proximity to the eastern end of the project. Special outreach efforts were complemented with Hmong-English translators and community representatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations/citizens who have previously expressed or are known to have interest in this proposal. At the time the draft environmental impact statement is circulated for public comments, a public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: November 29, 2001.

Maiser Khaled,

Chief, District Operations, California Division.

[FR Doc. 01–32157 Filed 12–31–01; 8:45 am]

BILLING CODE 4910–22–M

Corrections

Federal Register

Vol. 67, No. 1

Tuesday, January 2, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Terephthalate Film, Sheet, and Strip From India

Correction

In notice document 01–31515 beginning on page 65893 in the issue of Friday, December 21, 2001, make the following correction:

On page 65899, in column one, ''Dated: December 15, 2001'' should read ''Dated: December 13, 2001''.

[FR Doc. C1–31515 Filed 12–31–01; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL TRADE COMMISSION

16 CFR Part 4

Rules of Practice

Correction

In final rule document 01–30441 beginning on page 64142 in the issue of Wednesday, December 12, 2001 make the following correction:

§ 4.13 [Corrected]

On page 64144, in the first column, in § 4.13, in amendatory instruction 7, paragraph c. should read, ''c. Section 4.13 (d)-(f), (h), (j), (k).''.

[FR Doc. C1–30441 Filed 12–31–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–206–AD; Amendment 39–12544; AD 2001–24–27]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; Model DC–9–81, –82, –83, and –87 Series Airplanes; Model MD–88 Airplanes; and C–9 Airplanes

Correction

In final rule document 01–30203 beginning on page 64109 in the issue of Wednesday, December 12, 2001, make the following corrections:

§ 39.13 [Corrected]

1. On page 64111, in the second column, under heading **Restatement of Requirements of AD 96–02–05:**

a. In paragraph (a):

(1) In the second line, ''A27–325R02'' should read, ''A27–325''.

(2) In the third line from the bottom, ''A27–325R02'' should read, ''A27–325''.

b. In paragraph (a)(2), in the seventh line, ''A27–325R02'' should read, ''A27–325''.

2. On page 64111, in the third column, under heading **Restatement of Requirements of AD 96–02–05:**

a. In paragraph (b):

(1) In the second line ''A27–325R02'' should read, ''A27–325''.

(2) In the third line from the bottom, ''A27-325R02'' should read, ''A27-325''.

b. In paragraph (b)(2), in the seventh line, ''A27–325R02'' should read, ''A27–325''.

3. On page 64111, in the third column, under heading **New Actions Required by This AD**, in **Note 2:**, in the third line, DC9–27–325R02'' should read, ''DC9–27–325''.

4. On page 64112, in the first column under heading *Incorporation by Reference:*

a. In paragraph (f):

(1) In the third line, ''A27–325R02'' should read, ''A27–325''.

(2) In the fifth line, ''A27–325R'' should read, ''A27–325''.

b. In paragraph (f)(2), in the third line, ''A27–325R02'' should read, ''A27–325''.

c. In paragraph (f)(3), in the third line, ''A27–325R02'' should read, ''A27–325''.

[FR Doc. C1–30203 Filed 12–31–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA-2001-11128]

RIN 2120-AG34

Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park

Correction

In proposed rule document 01–30836 appearing on page 64778 in the issue of Friday, December 14, 2001, make the following corrections:

1. On page 64778, in the first column, under the heading **SUMMARY:**, in the 12th line ''fairies'' should read ''fairness''.

2. On the same page, in the second column, under the heading **FOR FURTHER INFORMATION CONTACT:**, in the ninth line ''*thomas.1.connor@faa.gov*'' should read''*thomas.l.connor@faa.gov*''.

3. On the same page, in the same column,in the first paragraph, in the third line under the heading **Background** ''Nose'' should read ''Noise''.

4. On the same page, in the same column, in the second paragraph, in the eighth line ''the'' should read ''The''.

[FR Doc. C1–30836 Filed 12–31–01; 8:45 am]

BILLING CODE 1505–01–D

Corrections

Federal Register

Vol. 67, No. 1

Tuesday, January 2, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Polyethylene Terephthalate Film, Sheet, and Strip From India

Correction

In notice document 01–31515 beginning on page 65893 in the issue of Friday, December 21, 2001, make the following correction:

On page 65899, in column one, ''Dated: December 15, 2001'' should read ''Dated: December 13, 2001''.

[FR Doc. C1–31515 Filed 12–31–01; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL TRADE COMMISSION

16 CFR Part 4

Rules of Practice

Correction

In final rule document 01–30441 beginning on page 64142 in the issue of Wednesday, December 12, 2001 make the following correction:

§ 4.13 [Corrected]

On page 64144, in the first column, in § 4.13, in amendatory instruction 7, paragraph c. should read, ''c. Section 4.13 (d)-(f), (h), (j), (k).''.

[FR Doc. C1–30441 Filed 12–31–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–206–AD; Amendment 39–12544; AD 2001–24–27]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; Model DC–9–81, –82, –83, and –87 Series Airplanes; Model MD–88 Airplanes; and C–9 Airplanes

Correction

In final rule document 01–30203 beginning on page 64109 in the issue of Wednesday, December 12, 2001, make the following corrections:

§ 39.13 [Corrected]

1. On page 64111, in the second column, under heading **Restatement of Requirements of AD 96–02–05:**

a. In paragraph (a):

(1) In the second line, ''A27–325R02'' should read, ''A27–325''.

(2) In the third line from the bottom, ''A27–325R02'' should read, ''A27–325''.

b. In paragraph (a)(2), in the seventh line, ''A27–325R02'' should read, ''A27–325''.

2. On page 64111, in the third column, under heading **Restatement of Requirements of AD 96–02–05:**

a. In paragraph (b):

(1) In the second line ''A27–325R02'' should read, ''A27–325''.

(2) In the third line from the bottom, ''A27-325R02'' should read, ''A27-325''.

b. In paragraph (b)(2), in the seventh line, ''A27–325R02'' should read, ''A27–325''.

3. On page 64111, in the third column, under heading **New Actions Required by This AD**, in **Note 2:**, in the third line, DC9–27–325R02'' should read, ''DC9–27–325''.

4. On page 64112, in the first column under heading *Incorporation by Reference:*

a. In paragraph (f):

(1) In the third line, ''A27–325R02'' should read, ''A27–325''.

(2) In the fifth line, ''A27–325R'' should read, ''A27–325''.

b. In paragraph (f)(2), in the third line, ''A27–325R02'' should read, ''A27–325''.

c. In paragraph (f)(3), in the third line, ''A27–325R02'' should read, ''A27–325''.

[FR Doc. C1–30203 Filed 12–31–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA-2001-11128]

RIN 2120-AG34

Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park

Correction

In proposed rule document 01–30836 appearing on page 64778 in the issue of Friday, December 14, 2001, make the following corrections:

1. On page 64778, in the first column, under the heading **SUMMARY:**, in the 12th line ''fairies'' should read ''fairness''.

2. On the same page, in the second column, under the heading **FOR FURTHER INFORMATION CONTACT:**, in the ninth line ''*thomas.1.connor@faa.gov*'' should read''*thomas.l.connor@faa.gov*''.

3. On the same page, in the same column,in the first paragraph, in the third line under the heading **Background** ''Nose'' should read ''Noise''.

4. On the same page, in the same column, in the second paragraph, in the eighth line ''the'' should read ''The''.

[FR Doc. C1–30836 Filed 12–31–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
January 2, 2002

Part II

Department of Transportation

Federal Transit Administration

FTA Fiscal Year 2002 Apportionments, Allocations and Program Information; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 2002 Apportionments, Allocations and Program Information

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) and Related Agencies Appropriations Act for Fiscal Year 2002 (FY 2002 DOT Appropriations Act) (Pub. L. 107–87) was signed into law by President Bush on December 18, 2001, and provides FY 2002 appropriations for the Federal Transit Administration (FTA) transit assistance programs. Based upon this Act, the Transportation Equity Act for the 21st Century (TEA–21), and 49 U.S.C. Chapter 53, this notice contains a comprehensive list of apportionments and allocations for transit programs.

In addition, prior year unobligated allocations for the section 5309 New Starts and Bus Programs are listed. The FTA policy regarding pre-award authority to incur project costs, Letter of No Prejudice Policy, and other pertinent program information are provided.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant-specific information and issues; Mary Martha Churchman, Director, Office of Resource Management and State Programs, (202) 366–2053, for general information about the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, the Rural Transit Assistance Program, the Elderly and Persons with Disabilities Program, the Clean Fuels Formula Program, the Over-the-Road Bus Accessibility Program, the Capital Investment Program, or the Job Access and Reverse Commute Program; or Paul L. Verchinski, Chief, Statewide and Intermodal Planning Division, (202) 366–1626, for general information concerning the Metropolitan Planning Program and the Statewide Planning and Research Program; or Henry Nejako, Program Management Officer, Office of Research, Demonstration and Innovation, (202) 366–3765, for general information about the National Planning and Research Program.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

Metropolitan Planning funds are apportioned by statutory formula to the Governors for allocation to Metropolitan Planning Organizations (MPOs) in urbanized areas or portions thereof to provide funds for their Unified Planning Work Programs. Statewide Planning and Research funds are apportioned to States by statutory formula to provide funds for their Statewide Planning and Research Programs. Urbanized Area Formula Program funds are apportioned by statutory formula to urbanized areas and to Governors to provide capital, operating and planning assistance in urbanized areas. Nonurbanized Area Formula Program funds are apportioned

by statutory formula to Governors for capital, operating and administrative assistance in nonurbanized areas. Elderly and Persons with Disabilities Program funds are apportioned by statutory formula to Governors to provide capital assistance to organizations providing transportation service for the elderly and persons with disabilities. Fixed Guideway Modernization funds are apportioned by statutory formula to specified urbanized areas for capital improvements in rail and other fixed guideways. New Starts identified in the FY 2002 DOT Appropriations Act and Bus Allocations identified in the Conference Report accompanying the Act are included in this notice. FTA will honor those designations included in report language to the extent that the projects meet the statutory intent of the specific program. Job Access and Reverse Commute (JARC) funds are awarded on a competitive basis. JARC projects identified in the FY 2002 DOT Appropriations Act are included in this notice. Over-the-Road Bus Accessibility Program projects are also competitively selected.

II. Overview

A. Fiscal Year 2002 Appropriations

The FY 2002 funding amounts for FTA programs are displayed in Table 1. The following text provides a narrative explanation of the funding levels and other factors affecting the apportionments and allocations.

B. TEA–21 Authorized Program Levels

TEA–21 provides a combination of trust and general fund authorizations that total $7.737 billion for the FY 2002 FTA program. Of this amount, $6.747 billion was guaranteed under the discretionary spending cap and made available in the FY 2002 DOT Appropriations Act. See Table 12 for fiscal years 1998–2003 guaranteed funding levels by program and Table 12A for the total of guaranteed and non-guaranteed levels by program.

Information regarding estimates of the funding levels for FY 2003 by State and urbanized area is available on the FTA Web site. The FY 2003 numbers are intended for planning purposes only but may be used for programming Metropolitan Transportation Improvement Programs and Statewide Transportation Improvement Programs. Actual apportionment figures for FY 2002 are contained in this notice, while apportionment figures for FY 1998–FY 2001 can be found in the appropriate FTA fiscal year apportionment notice, which is available on the FTA Web site.

C. Project Management Oversight

Section 5327 of Title 49 U.S.C., permits the Secretary of Transportation to use up to one-half percent of the funds made available under the Urbanized Area Formula Program and the Nonurbanized Area Formula Program, and three-quarters percent of funds made available under the Capital Investment Program to contract with any person to oversee the construction of any major project under these statutory programs to conduct safety, procurement, management and financial reviews and audits, and to provide technical assistance to correct deficiencies identified in compliance reviews and audits. Language in the 2002 DOT Appropriations Act increases the amount made available under the Capital Investment Program for oversight activities to one percent.

D. VIII Paralympiad for the Disabled

The FY 2002 DOT Appropriations Act made $5 million available from the formula grants program for the VIII Paralympaid for the Disabled, to be held in Salt Lake City, Utah. The funds shall be available for grants for the costs of planning, delivery and temporary use of transit vehicles for special transportation needs and construction of temporary transportation facilities for the VIII Paralympiad for the Disabled.

III. Fiscal Year 2002 Focus Areas

A. Transit Safety and Security

Public transit agencies throughout the nation have stepped up security efforts following the terrorist events of September 2001. FTA has launched an FY 2002 effort to assist transit providers to address security issues and has refocused funding to specific security-related activities. Initially, FTA will deploy security assessment teams to the largest transit systems in the country. These assessment findings and best practices will enable the FTA to provide extended assistance to all transit agencies to evaluate and update their emergency response plans. FTA will provide technical and funding assistance to transit agencies for full-scale emergency response drills based on their updated response plans and vulnerability assessments. Free regional workshops will offer security and emergency response training to local transit employees.

FTA has identified $2 million of FY 2002 research funding to undertake security-related transit research under the auspices of the Transit Cooperative Research Program of the National Academy of Sciences.

Also, recipients of section 5307 formula funding are reminded that at least one percent of the amount a grantee receives each fiscal year must be expended on ''mass transportation security projects'' unless the grantee certifies, and the Secretary of Transportation accepts, that the expenditure for security projects is unnecessary. It is unlikely that FTA will waive this requirement.

Another potential source of funding for transit security enhancements is through the FHWA transfer of flexible formula funds, as provided in 23 U.S.C. 104, which, in conjunction with Title 23 U.S.C. 120, provides transit agencies a 100 percent Federal share for safety projects (subject to a nationwide 10 percent program limitation).

B. 2000 Census

The Census Bureau identifies and classifies urban and rural population and delineates urbanized areas after each decennial census. The FTA uses urbanized and rural designations and statistical data for a number of purposes, including the apportionment of funds for its formula based programs.

The Census Bureau had not completed the process of delineating urbanized and rural areas for the 2000 Census at the time FTA apportioned FY 2002 funds. Therefore, the 1990 Census data was used for the FY 2002 apportionments contained in this notice.

It is anticipated that a number of areas will change categories under the 2000 Census, as a result of growth in population and/or the application of new criteria that will be used to define/designate urbanized and rural areas. Once FTA receives the 2000 Census data, we will post, on the FTA Website, estimated FY 2003 apportionments for the formula programs.

For further information contact Ken Johnson, FTA Office of Resource Management and State Programs, at (202) 366–2053.

C. TEAM-Web

The Transportation Electronic Award Management system (TEAM) is FTA's electronic grant making and record keeping system. On October 1, 2001, FTA released TEAM-Web, a new Internet version of the TEAM system. TEAM-Web permits grantees to submit their grant information via the Internet and provides for continued and enhanced submission of grant information electronically.

TEAM-Web provides the recipients of financial assistance online access to the FTA information resources that support their mission critical operations,

including real time access to detailed disbursements by project, balances in formula budget accounts, and the status of applications in the award process. The new system also has an email notification process that will ensure accountability when processing applications through the FTA Offices and the Department of Labor. All current user information has been migrated to the Web version of TEAM. FTA has conducted training sessions on how to navigate TEAM-Web in its Headquarters and Regional Offices. For information on future training sessions, contact the appropriate FTA Regional Office.

To access TEAM-Web, log onto the Internet at *http://FTATEAMWeb.fta.dot.gov.* For additional information, contact Glenn Bottoms, Chief, Transit Data and Support Division, (202) 366–1632.

D. New Starts Rule and Workshops

TEA–21 requires the FTA to issue regulations on the manner in which candidate projects for capital investment grants or loans for new fixed guideway systems and extensions to existing systems (New Starts) will be evaluated and rated. The Major Capital Investment Projects Final Rule (49 CFR Part 611), referred to as the New Starts Final Rule, was published in the **Federal Register** on December 7, 2000, and became effective on April 6, 2001.

Electronic access to this Final Rule and related documents is available through the FTA Web site (*http://www.fta.dot.gov*), under the New Starts section. Paper copies of this Final Rule and other documentation can be obtained by contacting FTA at one of our Regional Offices.

As in the previous fiscal year, FTA will conduct outreach sessions and workshops in FY 2002 to introduce the Final Rule and to continue longstanding outreach efforts on the New Starts program. Information on scheduled workshops can be obtained by contacting any FTA Regional Office, as well as the FTA Office of Planning and the FTA Office of Budget and Policy.

E. Intelligent Transportation Systems (ITS)

Section 5206(e) of TEA–21 requires that Intelligent Transportation Systems (ITS) projects using funds from the Highway Trust Fund (including the Mass Transit Account) conform to National ITS Architecture and Standards. The FTA National ITS Architecture Consistency Policy for Transit Projects implements the TEA–21 requirements and went into effect on April 8, 2001. The Policy is available on the FTA Web site, and guidance material is available on the Departmental ITS Web site at *www.its.dot.gov.* These standards and requirements apply to FY 2002 allocations included in this notice that contain ITS components. Using existing FTA oversight procedures, FTA has initiated a program to provide initial oversight and technical assistance with respect to National ITS Architecture Consistency requirements.

Questions regarding the applicability of these standards and requirements should be addressed to the FTA Regional Office or FTA Office of Research, Demonstration and Innovation, at (202) 366–4991.

F. Environmental Streamlining

TEA–21 directs DOT to expedite the environmental review process for proposed highway and transit projects. With this apportionments notice, FTA is introducing two measures concerning proposed major transit investments (New Starts) that will support timely delivery of projects, while maintaining and enhancing protection of the human and natural environment.

First, FTA is extending automatic pre-award authority to proposed New Starts projects for costs incurred to acquire real property and real property rights upon the completion of the National Environmental Policy Act (NEPA) review of the proposed project. NEPA review is complete when FTA signs an environmental Record of Decision (ROD) or Finding of No Significant Impact (FONSI) or makes a Categorical Exclusion (CE) determination. This measure will enable grant applicants to begin earlier to assist persons and businesses that will be displaced by the project in a manner consistent with commitments made as part of the NEPA review and in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). It will also help grant applicant to initiate the lengthy process of acquiring property earlier.

Second, FTA will extend automatic pre-award authority to proposed New Starts projects for costs incurred to carry out the NEPA review process and to prepare an Environmental Impact Statement (EIS), Environmental Assessment (EA), Categorical Exclusion (CE), or other environmental documents for that project upon the inclusion of that project in a federally approved State Transportation Improvement Program (STIP). FTA had previously given pre-award authority for use of formula funds. Now New Starts funds may serve as a funding source for these New Starts project NEPA activities. This measure will eliminate unnecessary delays in starting up the conceptual engineering, public involvement process, and interagency coordination for the project.

For additional information, contact Joseph Ossi, FTA Office of Planning, (202) 366–1613.

IV. Metropolitan Planning Program and State Planning and Research Program

A. Metropolitan Planning Program

Funding made available for the Metropolitan Planning Program (49 U.S.C. 5303) in the FY 2002 DOT Appropriations Act is $55,422,400, which is the guaranteed funding level under TEA–21. The FY 2002 Metropolitan Planning Program apportionment to States for MPOs' use in urbanized areas totals $55,662,971. This amount includes $55,422,400 in FY 2002 funds, and $240,571 in prior year deobligated funds available for reapportionment under this program. A basic allocation of 80 percent of this amount ($44,530,377) is distributed to the States based on the State's urbanized area population as defined by the U.S. Census Bureau for subsequent State distribution to each urbanized area, or parts thereof, within each State. A supplemental allocation of the remaining 20 percent ($11,132,594) is also provided to the States based on an FTA administrative formula to address planning needs in the larger, more complex urbanized areas. Table 2 contains the final State apportionments for the combined basic and supplemental allocations. Each State, in cooperation with the MPOs, must develop an allocation formula for the combined apportionment, which distributes these funds to MPOs representing urbanized areas, or parts thereof, within the State. This formula, which must be approved by the FTA, must ensure to the maximum extent practicable that no MPO is allocated less than the amount it received by administrative formula under the Metropolitan Planning Program in FY 1991 (minimum MPO allocation). Each State formula must include a provision for the minimum MPO allocation. Where the State and MPOs desire to use a new formula not previously approved by FTA, it must be submitted to the appropriate FTA Regional Office for prior approval.

By April 2002, the Census Bureau is expected to make available detailed results of the 2000 Census and designate new urbanized areas. When the Census Bureau issues its population data, FTA will request that States reaffirm these in-State formulas. A reaffirmation or new

in-State formula should be submitted to the FTA Regional Office in time to receive approval before October 1, 2002. Currently, guaranteed and authorized funding levels for each State over the life of TEA–21 (fiscal years 1999–2003) based on the 1990 Census, are posted at *http://www.fta.dot.gov/office/planning/gaf.htm.* FTA will post revised fiscal year 2003 guaranteed and authorized funding levels based on the 2000 Census for each State at this same Web site address, when 2000 Census data becomes available. This information should be utilized by each State when reaffirming or revising in-State formulas.

B. State Planning and Research Program

Funding made available for the State Planning and Research Program (49 U.S.C. 5313(b)) in the FY 2002 DOT Appropriations Act is $11,577,600, the guaranteed funding level under TEA–21.

The FY 2002 apportionment for the State Planning and Research Program (SPRP) totals $11,698,648. This amount includes $11,577,600 in FY 2002 funds, and $121,048 in prior year deobligated funds, which have become available for reapportionment under this program. Final State apportionments for this program are also contained in Table 2. These funds may be used for a variety of purposes such as planning, technical studies and assistance, demonstrations, management training, and cooperative research. In addition, a State may authorize a portion of these funds to be used to supplement metropolitan planning funds allocated by the State to its urbanized areas, as the State deems appropriate.

C. Data Used for Metropolitan Planning and State Planning and Research Apportionments

Population data from the 1990 Census is used in calculating these apportionments. The Metropolitan Planning funding provided to urbanized areas in each State by administrative formula in FY 1991 was used as a ''hold harmless'' base in calculating funding to each State.

D. FHWA Metropolitan Planning Program

For informational purposes, the estimated FY 2002 apportionments for the FHWA Metropolitan Planning Program (PL) are contained in Table 3. Estimated apportionments for the FY 2002 FHWA State Planning and Research Program (SPRP) were not available at the time of publication of this notice.

E. Local Match Waiver for Specified Planning Activities

Job Access and Reverse Commute Planning. Federal, State and local welfare reform initiatives may require the development of new and innovative public and other transportation services to ensure that former welfare recipients have adequate mobility for reaching employment opportunities. In recognition of the key role that transportation plays in ensuring the success of welfare-to-work initiatives, FTA and FHWA permit the waiver of the local match requirement for job access and reverse commute planning activities undertaken with both FTA and FHWA Metropolitan Planning Program and State Planning and Research Program funds. FTA and FHWA will support requests for waivers when they are included in Metropolitan Unified Planning Work Programs and State Planning and Research Programs and meet all other appropriate requirements.

F. Planning Emphasis Areas for Fiscal Year 2002

The FTA and FHWA identify Planning Emphasis Areas (PEAs) annually to promote priority themes for consideration, as appropriate, in metropolitan and statewide transportation planning processes. To support this, FTA and FHWA will prepare an inventory of current practice, guidance and training in those areas. Opportunities for exchanging ideas and experiences on innovative practices in these topic areas also will be provided throughout the year. For FY 2002, five key planning themes have been identified: (1) Consideration of safety and security in the transportation planning process; (2) integration of planning and environmental processes; (3) consideration of management and operations within planning processes; (4) consultation with local officials; and (5) enhancing the technical capacity of planning processes.

1. Safety and Security in the Transportation Planning Process

TEA–21 emphasizes the safety and security of transportation systems as a national priority and calls for transportation projects and strategies that ''increase the safety and security of transportation systems.'' This entails integration of safety and facility security into all stages of the transportation planning process.

FTA and FHWA are working together to advance the state-of-practice in addressing safety and security in the metropolitan and statewide planning process through workshops and case studies. A report prepared by the Transportation Research Board (TRB), Transportation Research Circular E–C02, ''Safety-Conscious Planning,'' January 2001, describes the issues and recommendations identified at a Safety in Planning workshop held earlier. The report is available on the TRB Web site at www.nas.edu/trb. Also, the Institute of Transportation Engineers (ITE) has prepared a discussion paper on the topic, entitled ''The Development of the Safer Network Transportation Planning Process,'' which is posted to their Web site at [*www.ite.org.*]

2. Integrated Planning and Environmental Processes

TEA–21 mandates the elimination of the Major Investment Study as a stand-alone requirement, while integrating the concept within the planning and project development/environmental review processes. A training course entitled ''Linking Planning and NEPA'' is being developed and will be made available at the National Transit Institute Web site—[*www.ntionline.com*].

3. Consideration of Management and Operations Within Planning Processes

TEA–21 challenges FHWA and FTA to move beyond traditional capital programs for improving the movement of people and goods—focusing on the need to improve the way transportation systems are managed and operated. FTA and FHWA have convened a working group and have commissioned discussion papers on the topic. This information is available at *http://plan2op.fhwa.dot.gov.*

4. Consultation With Local Officials

Consultation with local officials is a vital yet sensitive issue within the transportation planning process. Within metropolitan areas, the MPO provides the venue and policy context for this. Outside of metropolitan areas, FHWA and FTA are working to facilitate the most effective consultation processes within each State. FTA and FHWA will continue to ensure effective consultation between States and local officials in non-metropolitan areas in reviewing statewide planning and, specifically, in making findings in support of FTA and FHWA STIP approvals.

5. Enhancing the Technical Capacity of Planning Processes

Reliable information on current and projected usage and performance of transportation systems is critical to the ability of planning processes to supply credible information to decision-makers

to support preparation of plans and programs that respond to their localities' unique needs and policy issues. To ensure the reliability of usage and performance data, as well as the responsiveness of policy forecasting tools, an evaluation is needed of the quality of information provided by the technical tools, data sources, forecasting models, as well as the expertise of staff to ensure its adequacy to support decision-making. And if this support is found to be lacking, the responsible agencies within metropolitan and statewide planning processes are encouraged to devote appropriate resources to enhancing and maintaining their technical capacity.

The metropolitan and statewide transportation planning processes have become critical tools for responding to increasingly complex issues at the State and local levels. Many of these issues are encompassed in previously listed planning emphasis areas (e.g., integrated planning and environmental processes, management and operations, analytical tools and methods) and include much more. It is essential that FTA and FHWA provide technical assistance, training, and information to our customers to further enhance the skills and capabilities they utilize to conduct effective transportation planning processes. The FTA and FHWA have created the Metropolitan Capacity Building (MCB) Program, and the Statewide and Rural Capacity Building Programs as tools to disseminate and coordinate information, training, and foster a dialogue for the exchange of ideas. More information on the MCB program can be found at *www.mcb.fhwa.dot.gov.*

For further information on these PEAs, contact Ken Lord, FTA Metropolitan Planning Division, (202) 366–2836, or Shana Baker, FHWA Office of Metropolitan Planning and Programs, (202) 366–1862.

G. Federal Planning Certification Reviews

The Intermodal Surface Transportation Efficiency Act (ISTEA) initiated, and TEA–21 continued, the requirement for the FTA and FHWA to certify, at least every three years, that the planning processes conducted in the largest metropolitan areas were being carried out in compliance with applicable provisions of Federal law. This provision applies specifically to localities termed ''Transportation Management Areas'' (TMA), which are urbanized areas with populations of 200,000 and above, or other urbanized areas that may be designated by the Secretary of Transportation. TEA–21 further required that, in conducting these certification reviews, provisions be made for public involvement appropriate to the metropolitan area under review.

To that end, an annual calendar of prospective dates and locations for certification reviews of TMAs anticipated in FY 2002 has been prepared and is posted on the FTA Web site at *http://www.fta.dot.gov/library/planning/cert2002.htm.*

For further information regarding Federal certifications of the planning process, contact: for FTA, Charles Goodman, FTA Metropolitan Planning Division, (202) 366–1944, or Scott Biehl, FTA Office of Chief Counsel, (202) 366–4063; for FHWA, Sheldon Edner, FHWA Metropolitan Planning Division, (202) 366–4066, or Reid Alsop, FHWA Office of the Chief Counsel, (202) 366–1371.

H. Consolidated Planning Grants

Since FY 1997, FTA and FHWA have offered States the option of participating in a pilot Consolidated Planning Grant (CPG) program. Additional State participants are sought so that FTA and FHWA can benefit from the widest possible range of participant input to improve and further streamline the process.

With the fund transfer provisions of TEA–21, which were applied to the CPG beginning in FY 2000, all funds (more than 35 post-FY 1999 FHWA sources are eligible for transfer) can be accessed by indicating only whether the funds are for State or metropolitan planning. This streamlined fund drawdown process eliminates the need to monitor individual fund sources, if several have been used, and ensures that the oldest funds will always be used first.

Under the CPG, States can report metropolitan planning expenditures (to comply with the Single Audit Act) for both FTA and FHWA under the Catalogue of Federal Domestic Assistance number for FTA's Metropolitan Planning Program. Additionally, for States with an FHWA Metropolitan Planning (PL) fund-matching ratio greater than 80 percent, the State (through FTA) can request a waiver of the 20 percent local share requirement in order that all FTA funds used for metropolitan planning in a CPG can be granted at the higher FHWA rate. For some States, this Federal match rate can exceed 90 percent. Currently, three western States participating in the pilot (California, Idaho, and Wyoming) are using the FHWA PL match rate for FTA's Metropolitan Planning Program.

Pre-award authority has been granted to FTA's planning programs for the life of TEA–21. This pre-award authority enables States to continue planning program activities from year to year with the assurance that eligible costs can later be converted to a regularly funded Federal project without the need for prior approval or authorization from the granting agency. Beginning in FY 2000, the transfer procedures established to implement the transfer provision in TEA–21 (section 1103(i) ''Transfer of Highway and Transit Funds'') is applicable to FHWA funds used in CPG. For planning projects funded through CPG, the State DOT requests the transfer of funds in a letter to the FHWA Division Office. The FHWA-funded planning activities must be in accordance with the State's or MPO's Planning Work Program. The letter must be signed by the appropriate State official or their designee and must specify the State and the amount of funding to be transferred for the CPG by apportionment category (e.g. STP, CMAQ, Donor State Bonus, Funding Restoration, etc.) and by appropriation year. The letter should include only the funding for planning activities contained in the State's or MPO's Planning Work Program. If no FTA program, either Metropolitan Planning (49 U.S.C. 5303) or Statewide Planning and Research (49 U.S.C. 5313(b)), is indicated for transfers to CPG, funds will be credited to the Metropolitan Planning Program.

As part of the pilot, FTA will continue to work with participating States to increase the flexibility and further streamline the consolidated approach to planning grants. For further information on participating in the CPG Pilot, contact Candace Noonan, Intermodal and Statewide Planning Division, FTA, at (202) 366–1648 or Anthony Solury, Office of Planning and Environment, FHWA, at (202) 366–5003.

I. New Starts Approval to Enter Preliminary Engineering and Final Design

TEA–21 extends FTA's long-standing authority for approving the advancement of candidate New Starts projects into preliminary engineering (PE) by requiring that FTA also approve entrance into the final design (FD) stage of project development. Specifically, 49 U.S.C. 5309(e)(6) requires that a proposed New Starts project may advance into preliminary engineering or final design only if FTA finds that the project meets the statutory criteria specified in § 5309(e), and that there is a reasonable likelihood that it will continue to do so. In making such findings, FTA evaluates and rates proposed New Starts projects as ''highly

recommended,'' ''recommended,'' or ''not recommended,'' based on the results of alternatives analysis, the statutory criteria for project justification, and the degree of local financial commitment. FTA has established a set of decision rules for approving entrance into preliminary engineering and final design at 49 CFR part 611. After first meeting several basic planning, environmental, and project management requirements which demonstrate the ''readiness'' of the project to advance into the next stage of project development, candidate projects are subject to FTA evaluation against the New Starts project justification and local financial commitment criteria. Projects may advance to the next appropriate stage of project development (PE or FD) only if rated ''recommended'' or ''highly recommended,'' based on FTA's evaluation under the statutory criteria. Projects rated ''not recommended'' will not be approved to advance.

Section 5309(e)(8)(A) of Title 49 U.S.C. exempts projects which request a section 5309 New Starts share of less than $25 million from the requirements of section 5309(e). TEA–21 also provides statutory exemptions to certain specific projects. It is important to note that any exemption under section 5309(e)(8)(A) applies only to the statutory New Starts project evaluation criteria that serves as the basis for FTA's approval to advance to preliminary engineering and final design for such projects. Proposed New Starts projects seeking less than $25 million in funding from the § 5309 New Starts program must still request approval to enter the next stage of development, and must fulfill all appropriate planning, environmental, and project management requirements. Nonetheless, FTA encourages sponsors of projects they believe to be exempt to submit the full range of data to FTA for evaluation and rating. This will provide FTA with the means necessary to make funding recommendations for such projects to Congress, and will protect project sponsors in the event that further project development activities reveal the need for additional § 5309 New Starts funding beyond $25 million.

V. Urbanized Area Formula Program

A. Total Urbanized Area Formula Apportionments

The amount made available to the Urbanized Area Formula Program (49 U.S.C. 5307) in the FY 2002 DOT Appropriations Act is $3,216,040,006. In addition, $7,092,285 in deobligated funds became available for reapportionment under the Urbanized Area Formula Program as provided by 49 U.S.C. 5336(i).

After reserving $16,080,200 for oversight, the amount of FY 2002 funds available for apportionment is $3,199,959,806. The funds to be reapportioned, described in the previous paragraph, are then added and increase the total amount apportioned for this program to $3,207,052,091. Table 4 displays the amounts apportioned under the Urbanized Area Formula Program. Table 13 contains the apportionment formula for the Urbanized Area Formula Program.

An additional $4,849,950 is made available for the Alaska Railroad for improvements to its passenger operations. After reserving $24,250 for oversight, $4,825,700 is available for the Alaska Railroad.

B. Fiscal Year 2001 Apportionment Adjustments

Adjustments were made to the apportionment of two urbanized areas because of corrections to data used to compute the FY 2001 Urbanized Area Formula Program apportionments, published in the **Federal Register** of January 18, 2001 (66 FR 4918). The differences between the previously published apportionment and the corrected apportionment for these areas have been resolved and the necessary adjustment made to the areas' apportionment for FY 2002. The amounts published in this notice contain the adjustments and the affected urbanized areas have been advised.

C. Data Used for Urbanized Area Formula Apportionments

Data from the 2000 National Transit Database (NTD) Report Year (49 U.S.C. 5335) submitted in late 2000 and early 2001 were used to calculate the FY 2002 Urbanized Area Formula apportionments for urbanized areas 200,000 in population and over. Population and population density data are also used in calculating apportionments under the Urbanized Area Formula Program.

D. Urbanized Area Formula Apportionments to Governors

The total Urbanized Area Formula apportionment to the Governor for use in areas under 200,000 in population for each State is shown in Table 4. This table also contains the total apportionment amount attributable to each urbanized area within the State. The Governor may determine the allocation of funds among the urbanized areas under 200,000 in population with one exception. As further discussed in Section G below, funds attributed to an urbanized area under 200,000 in population, located within the planning boundaries of a transportation management area, must be obligated in that area.

E. Transit Enhancements

One percent of the Urbanized Area Formula Program apportionment in each urbanized area with a population of 200,000 and over must be made available only for transit enhancements. Table 4 shows the amount set aside for enhancements in these areas.

The term ''transit enhancement'' includes projects or project elements that are designed to enhance mass transportation service or use and are physically or functionally related to transit facilities. Eligible enhancements include the following: (1) Historic preservation, rehabilitation, and operation of historic mass transportation buildings, structures, and facilities (including historic bus and railroad facilities); (2) bus shelters; (3) landscaping and other scenic beautification, including tables, benches, trash receptacles, and street lights; (4) public art; (5) pedestrian access and walkways; (6) bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on mass transportation vehicles; (7) transit connections to parks within the recipient's transit service area; (8) signage; and (9) enhanced access for persons with disabilities to mass transportation.

It is the responsibility of the MPO to determine how the one percent will be allotted to transit projects. The one percent minimum requirement does not preclude more than one percent being expended in an urbanized area for transit enhancements. Items that are only eligible as enhancements—in particular, operating costs for historic facilities—may be assisted only within the one percent funding level.

The recipient must submit a report to the appropriate FTA Regional Office listing the projects or elements of projects carried out with those funds during the previous fiscal year and the amount awarded. The report must be submitted with the Federal fiscal year's final quarterly progress report in TEAM-Web. The report should include the following elements: (a) Grantee name, (b) urbanized area name and number, (c) FTA project number, (d) transit enhancement category, (e) brief description of enhancement and progress towards project implementation, (f) activity line item code from the approved budget, and (g)

amount awarded by FTA for the enhancement.

F. Fiscal Year 2002 Operating Assistance

FY 2002 funding for operating assistance is available only to urbanized areas with populations under 200,000. For these areas, there is no limitation on the amount of the State apportionment that may be used for operating assistance, and the Federal/local share ratio is 50/50.

TEA–21 provides two exceptions to the restriction on operating assistance in areas over 200,000 in population. These exceptions have been addressed and eligible areas previously notified.

G. Designated Transportation Management Areas

All urbanized areas over 200,000 in population have been designated as Transportation Management Areas (TMAs), in accordance with 49 U.S.C. 5305. These designations were formally made in a **Federal Register** Notice dated May 18, 1992 (57 FR 21160). Additional areas have been designated as TMAs upon the request of the Governor and the MPO designated for such area or the affected local officials. During FY 2001, no additions to existing TMAs were designated.

Guidance for setting the boundaries of TMAs is contained in the joint transportation planning regulations codified at 23 CFR part 450 and 49 CFR part 613. In some cases, the TMA boundaries, which have been established by the MPO for the designated TMA, also include one or more urbanized areas with less than 200,000 in population. Where this situation exists, the discretion of the Governor to allocate Urbanized Area Formula program ''Governor's Apportionment'' funds for urbanized areas with less than 200,000 in population is restricted, i.e., the Governor only has discretion to allocate Governor's Apportionment funds attributable to areas that are outside of designated TMA boundaries.

If any additional small urbanized areas—within the boundaries of a TMA—are identified, notification should be made in writing to the Associate Administrator for Program Management, Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590, no later than July 1 of each fiscal year. FTA's most recent list of urbanized areas with population less than 200,000 that are included within the planning boundaries of designated TMAs, is contained in the ''FTA Fiscal Year 2001 Apportionment, Allocations and Program Information; Notice'' which, can be found on the FTA Web site.

H. Urbanized Area Formula Funds Used for Highway Purposes

Urbanized Area Formula funds apportioned to a TMA can be transferred to FHWA and made available for highway projects if the following three conditions are met: (1) Such use must be approved by the MPO in writing after appropriate notice and opportunity for comment and appeal are provided to affected transit providers; (2) in the determination of the Secretary, such funds are not needed for investments required by the Americans with Disabilities Act of 1990 (ADA); and (3) the MPO determines that local transit needs are being addressed.

Urbanized Area Formula funds that are designated for highway projects will be transferred to and administered by FHWA. The MPO should notify FTA of its intent to use FTA funds for highway purposes, as prescribed in section VIII.A., below.

I. National Transit Database (NTD) Internet Reporting and Redesign Effort

The NTD is the FTA database for nation-wide statistics on the transit industry, including safety data. Prior to FY 2001, FTA reporters utilized diskettes to submit statistics on their operating, financial and safety activities to FTA. Last year, reporters had the option of using the diskette system or the FTA new Internet reporting system. Beginning with FY 2002, all reports will need to be submitted via the Internet. Diskettes will no longer be accepted. The FTA NTD reporting seminars, held six times annually across the country, have concentrated on the Internet reporting system. The changeover to Internet reporting has received favorable comments and has resulted in accelerated data collection and validation.

NTD statistics are utilized, in part, to apportion Urbanized Area Formula Program funds for areas over 200,000 in population. In addition, NTD data is summarized and used to report to Congress on the performance of the transit industry and associated costs. These data are used to assist in assessing whether annual FTA Strategic Plan goals are achieved.

The overall effort to modernize and redesign the NTD—as detailed in the FTA May 31, 2001 report to Congress entitled ''Review of the National Transit Database''—continues and is now in the programming phase. Plans call for reporting via the new NTD in the Fall of 2002 with training for NTD reporters to begin in the winter of 2001. The monthly/quarterly reporting of summary safety, security, and extent of service data, as well as immediate reporting of major safety and security incidents, will be implemented in calendar year 2002. This reporting has been structured to exempt smaller transit properties (under 100 vehicles in maximum service) from the monthly reporting requirement. An increased number of NTD seminars are scheduled to assist transit properties in reporting. See the NTD Web site for further information at *www.ntdprogram.com*.

VI. Nonurbanized Area Formula Program and Rural Transit Assistance Program (RTAP)

A. Nonurbanized Area Formula Program

The amount made available for the Nonurbanized Area Formula Program (49 U.S.C. 5311) in the FY 2002 DOT Appropriations Act is $224,555,243. The FY 2002 Nonurbanized Area Formula apportionments to the States total $226,410,089 and are displayed in Table 5. Of the $224,555,243 available, $1,122,776 was reserved for oversight. The funds apportioned include $2,977,622 in deobligated funds from fiscal years prior to FY 2002.

The Nonurbanized Area Formula Program provides capital, operating and administrative assistance for areas under 50,000 in population. Each State must spend no less than 15 percent of its FY 2002 Nonurbanized Area Formula apportionment for the development and support of intercity bus transportation, unless the Governor certifies to the Secretary that the intercity bus service needs of the State are being adequately met.

B. Rural Transit Assistance Program (RTAP)

Funding made available for the RTAP (49 U.S.C. 5311(b)(2)) in the 2002 DOT Appropriations Act was $5,250,000, the guaranteed funding level under TEA–21. The FY 2002 RTAP allocations to the States total $5,270,729 and are also displayed in Table 5. This amount includes $5,250,000 in FY 2002 funds, and $20,729 in prior year deobligated funds, which are available for reapportionment.

The funds are allocated to the States to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas. These funds are to be used in conjunction with the States' administration of the Nonurbanized Area Formula Program.

FTA also supports RTAP activities at the national level within the National

Planning and Research Program (NPRP). The National RTAP projects support the States in their use of the formula allocations for training and technical assistance. Congress did not designate any funds for the National RTAP among the NPRP allocations in the Conference Report accompanying the FY 2002 DOT Appropriations Act. FTA will, however, include the National RTAP among priority projects to be funded from available NPRP funds. During FY 2002, FTA will conduct a competitive selection to choose providers of the National RTAP services for the next five years.

VII. Elderly and Persons with Disabilities Program

Funds in the amount of $84,604,801 are made available for the Elderly and Persons with Disabilities Program (49 U.S.C. 5310) in the FY 2002 DOT Appropriations Act. A total of $84,930,249 is apportioned to the States for FY 2002 for the Elderly and Persons with Disabilities Program. In addition to the FY 2002 funding of $84,604,801, the FY 2002 apportionment includes $325,448 in prior year unobligated funds, which are available for reapportionment under the Elderly and Persons with Disabilities Program. Table 6 shows each State's apportionment.

The formula for apportioning these funds uses Census population data for persons aged 65 and over and for persons with disabilities. The funds provide capital assistance for transportation for elderly persons and persons with disabilities. Eligible capital expenses may include, at the option of the recipient, the acquisition of transportation services by a contract, lease, or other arrangement.

While the assistance is intended primarily for private non-profit organizations, public bodies that coordinate services for the elderly and persons with disabilities, or any public body that certifies to the State that there are no non-profit organizations in the area that are readily available to carry out the service, may receive these funds.

These funds may be transferred by the Governor to supplement Urbanized Area Formula or Nonurbanized Area Formula capital funds during the last 90 days of the fiscal year.

VIII. FHWA Surface Transportation Program and Congestion Mitigation and Air Quality Funds Used for Transit Purposes (Title 23, U.S.C. 104)

A. Transfer Process

The process for transferring flexible formula funds between FTA and FHWA programs is described below. Information on the transfer of FHWA funds to FTA planning programs can be found in section IV.H., above.

Transfer From FHWA to FTA

FHWA funds designated for use in transit capital projects must result from the metropolitan and statewide planning and programming process, and must be included in an approved Statewide Transportation Improvement Program (STIP) before the funds can be transferred. The State DOT requests, by letter, the transfer of highway funds for a transit project to the FHWA Division Office. The letter should specify the project, amount to be transferred, apportionment year, State, Federal aid apportionment category (i.e., Surface Transportation Program (STP), Congestion Mitigation and Air Quality (CMAQ), Interstate Substitute, or congressional earmark), and a description of the project as contained in the STIP.

The FHWA Division Office confirms that the apportionment amount is available for transfer and concurs in the transfer by letter to the State DOT and FTA. The FHWA Office of Budget and Finance then transfers obligation authority and an equal amount of cash to FTA. All CMAQ, STP, and FHWA funds allocated to transit projects in the Appropriations Act or Conference Report will be transferred to one of the three FTA formula capital programs (i.e. Urbanized Area Formula (section 5307), Nonurbanized Area Formula (section 5311) or Elderly and Persons with Disabilities (section 5310).

The FTA grantee's application for the project must specify which capital program the funds will be used for and the application should be prepared in accordance with the requirements and procedures governing that program. Upon review and approval of the grantee's application, FTA obligates funds for the project.

The transferred funds are treated as FTA formula funds, but are assigned a distinct identifying code for tracking purposes. The funds may be used for any purpose eligible under the FTA formula capital program to which they are transferred. FTA and FHWA have issued guidance on project eligibility under the CMAQ program in a **Federal Register** notice dated February 23, 2000 (65 FR 9040). All FTA requirements are applicable to transferred funds except local share—FHWA local share requirements apply. Transferred funds should be combined with regular FTA funds in a single annual grant application.

Transfers From FTA to FHWA

The Metropolitan Planning Organization (MPO) submits a request to the FTA Regional Office for a transfer of FTA section 5307 formula funds (apportioned to an urbanized area 200,000 and over in population) to FHWA based on approved use of the funds for highway purposes, as contained in the Governor's approved State Transportation Improvement Program. The MPO must certify that: (1) The funds are not needed for capital investments required by the Americans with Disabilities Act; (2) notice and opportunity for comment and appeal has been provided to affected transit providers; and (3) local funds used for non-Federal match are eligible to provide assistance for either highway or transit projects. The FTA Regional Administrator reviews and concurs in the request, then forwards the approval to FTA Headquarters, where a reduction is made to the grantee's formula apportionment and FTA's National Operating Budget in TEAM-Web, equal to the dollar amount being transferred to FHWA.

For information regarding these procedures, please contact Kristen D. Clarke, FTA Budget Division, at (202) 366–1699; or Richard Meehleib, FHWA Finance Division, at (202) 366–2869.

B. Matching Share for FHWA Transfers

The provisions of Title 23 U.S.C., regarding the non-Federal share apply to Title 23 funds used for transit projects. Thus, FHWA funds transferred to FTA retain the same matching share that the funds would have if used for highway purposes and administered by FHWA.

There are three instances in which a Federal share higher than 80 percent would be permitted. First, in States with large areas of Indian and certain public domain lands and national forests, parks and monuments, the local share for highway projects is determined by a sliding scale rate, calculated based on the percentage of public lands within that State. This sliding scale, which permits a greater Federal share, but not to exceed 95 percent, is applicable to transfers used to fund transit projects in these public land States. FHWA develops the sliding scale matching ratios for the increased Federal share.

Secondly, commuter carpooling and vanpooling projects and transit safety projects using FHWA transfers administered by FTA may retain the same 100 percent Federal share that would be allowed for ride-sharing or safety projects administered by the FHWA.

The third instance includes the 100 percent Federal safety projects;

however, these are subject to a nationwide 10 percent program limitation.

IX. Capital Investment Program (49 U.S.C. 5309)

A. Fixed Guideway Modernization

The formula for allocating the Fixed Guideway Modernization funds contains seven tiers. The apportionment of funding under the first four tiers, through FY 2003, is based on data used to apportion the funding in FY 1997. Funding under the last three tiers is apportioned based on the latest available route miles and revenue vehicle miles on segments at least seven years old, as reported to the NTD.

Table 7 displays the FY 2002 Fixed Guideway Modernization apportionments. Fixed Guideway Modernization funds apportioned for this section must be used for capital projects to maintain, modernize, or improve fixed guideway systems.

All urbanized areas with fixed guideway systems that are at least seven years old are eligible to receive Fixed Guideway Modernization funds. A request for the start-up service dates for fixed guideways has been incorporated into the NTD reporting system to ensure that all eligible fixed guideway data is included in the calculation of the apportionments. A threshold level of more than one mile of fixed guideway is required to receive Fixed Guideway Modernization funds. Therefore, urbanized areas reporting one mile or less of fixed guideway mileage under the NTD are not included.

For FY 2002, $1,136,400,000 is made available for Fixed Guideway Modernization in the FY 2002 DOT Appropriations Act, which is the guaranteed funding level in TEA–21. An amount of $11,364,000 was then deducted for oversight, and $7,047,502 was set aside for the Alaska Railroad as directed by language in Section 1124 of the FY 2001 Omnibus Consolidated Appropriations Act (Pub. L. 106–554), leaving $1,117,988,498 available for apportionment to eligible urbanized areas. In addition to the FY 2002 funding, $547,205 in deobligated funds from fiscal years prior to FY 2002 is added and increases the total amount apportioned to $1,118,535,703 under Fixed Guideway Modernization. Table 14 contains information regarding the Fixed Guideway Modernization apportionment formula.

The Alaska Railroad has been determined to be eligible for funding under the Fixed Guideway Modernization program for service provided in the Anchorage, AK, urbanized area. The FY 2002 Fixed Guideway Modernization apportionment for the Alaska Railroad is, in part, based on a calculated amount derived from application of the Fixed Guideway Modernization formula—using approved Alaska Railroad data for fixed guideway directional route miles located within the Anchorage, AK, urbanized area. In addition, the Alaska Railroad apportionment includes the $7,047,502 set aside for the Alaska Railroad as directed in Public Law 106–554.

The Alaska Railroad eligibility to receive funds under the Fixed Guideway Modernization program is pursuant to FTA's determination that: (1) it is the fixed guideway system for the Anchorage, AK urbanized area (which is an urbanized area eligible for assistance under section 5336(b)(2)(A) of 49 U.S.C. Chapter 53, and therefore eligible for funding under sections 5337(a)(5)(B), 5337(a)(6)(B), and 5337(a)(7)(B)); and (2) the Alaska Railroad meets the standard of having been in service for at least seven years.

The Alaska Railroad was built by the Federal Government between 1914 and 1923. The Railroad operated under the control of the Interior Department until April 1967 when the Department of Transportation assumed that responsibility. After passage of special Federal legislation, the assets of the Alaska Railroad were sold to the State of Alaska, which assumed ownership of the railroad in January 1985. Since Federal ownership of the Alaska Railroad has extended over the greater part of its existence, the DOT acknowledges a special stewardship towards the Alaska Railroad within the Anchorage urbanized area. For purposes of formula apportionments beginning in FY 2004 and beyond, FTA will create a mode code exclusively for reporting to the NTD by the Alaska Railroad in the NTD Reporting Manual for report year 2002.

B. New Starts

The amount made available for New Starts in the FY 2002 DOT Appropriations Act is $1,136,400,000, which was fully allocated and represents the guaranteed funding level under TEA–21. Of this amount, $11,364,000 is reserved for oversight activities, leaving $1,125,036,000 available for allocations to projects. Prior year unobligated funds specified by Congress to be reallocated in the amount of $1,488,840 are then added and increase the total amount allocated to $1,126,524,840. The reallocated funds are derived from unobligated and deobligated balances for the following projects: Hartford-Old Saybrook, CT, project, $496,280; New London-Waterfront, CT, access project, $496,280; and North Front Range, CO, corridor feasibility study, $496,280. The final allocation for each New Starts project is listed in Table 8.

Prior year unobligated allocations for New Starts in the amount of $543,136,665 remain available for obligation in FY 2002. This amount includes $531,342,762 in fiscal years 2000 and 2001 unobligated allocations, and $11,793,903 for fiscal years 1998 and 1999 unobligated allocations that are extended in the FY 2002 Conference Report. These unobligated amounts are displayed in Table 8A.

Capital Investment Program funds for New Starts projects identified as having been extended in the FY 2002 Conference Report accompanying the FY 2002 DOT Appropriations Act, will lapse September 30, 2002. A list of the extended projects and the amount that remains unobligated as of September 30, 2001, is appended to Table 8A for ready reference.

C. Bus

The FY 2002 DOT Appropriations Act provides $568,200,000, for the purchase of buses, bus-related equipment and paratransit vehicles, and for the construction of bus-related facilities. This amount represents the guaranteed funding level under TEA–21.

TEA–21 established a $100 million Clean Fuels Formula Program under 49 U.S.C. 5308 (described in section XII below). The program is authorized to be funded with $50 million from the Bus category of the Capital Investment Program and $50 million from the Formula Program. However, the FY 2002 DOT Appropriations Act directs FTA to transfer the formula portion to, and merge it with, funding provided for the Bus category of the Capital Investment Program. Thus, $618,200,000 appropriated in FY 2002 is available for funding the Bus category of the Capital Investment Program. In addition, Congress directed that funds made available for bus and bus facilities be supplemented with $1,733,658 from projects included in previous Appropriations Acts, which increases the total amount made available to $619,933,658. The supplemental funds are derived from unobligated balances for the following projects: Carroll County, NH transportation alliance buses, $198,500; New Hampshire statewide buses, $34,001; Gary, IN transit consortium buses, $310,157; Jefferson Parish, LA bus and bus facilities, $347,375; Louisiana state infrastructure bank, bus and bus

facilities, $347,375; and North Slope borough, AK, $496,250.

After deducting $6,182,000 for oversight, the amount available for allocation under the Bus category is $613,751,658. Table 9 displays the allocation of the FY 2002 Bus funds by State and project. The FY 2002 Conference Report accompanying the FY 2002 DOT Appropriations Act allocated all of the FY 2002 Bus funds to specified States or localities for bus and bus-related projects. FTA will honor those allocations to the extent that they comply with the statutory authorization for that program.

Prior year unobligated balances for Bus Program allocations in the amount of $494,182,292 remain available for obligation in FY 2002. This includes $477,559,360 in fiscal years 2000 and 2001 unobligated allocations, and $16,622,932 for fiscal years 1998 and 1999 unobligated allocations that are extended in the FY 2002 Conference Report or the FY 2001 Supplemental Appropriations Act Conference Report. These unobligated amounts are displayed in Table 9A.

Capital Investment Program funds for Bus projects identified as having been extended in the Conference Report accompanying the FY 2002 DOT Appropriations Act or the FY 2001 Supplemental Appropriations Act, will lapse September 30, 2002. A list of the extended projects and the amount that remains unobligated as of September 30, 2001, is appended to Table 9A for ready reference.

In addition, the FY 2002 Conference Report provides clarification for FY 2001 projects and permits the use of FY 2001 appropriations for additional work as follows:

(1) Funds appropriated for the Lowell, Massachusetts transit hub can be used for the Hale Street bus maintenance and operations center;

(2) Funds appropriated for the Municipal Transit Operators in California can be used for bus and bus facilities;

(3) Funds appropriated for the King County Metro Eastgate park and ride can be used for the Issaquah Highlands park and ride;

(4) Funds allocated for buses for Suburban Mobility Authority for Regional Transportation (SMART) in Southeast Michigan may also be available for bus facilities; and

(5) Funds appropriated to the Burlington, Vermont multi-modal transit project in fiscal years 1998, 1999, 2000, and 2001 will be available for construction of the multimodal project and other transit improvements.

X. Job Access and Reverse Commute Program

The FY 2002 DOT Appropriations Act provides $125 million for the Job Access and Reverse Commute (JARC) Program, which is the guaranteed funding level under TEA–21. In the FY 2002 Conference Report the appropriators indicated their desire that $109,339,000 of this amount be awarded to certain specified States and localities. These areas and the corresponding amounts are listed in Table 10. States and localities listed in the FY 2002 Conference Report, along with other States and localities not so listed, are invited to apply for JARC funding according to the procedures that will be published in a separate **Federal Register** notice. That notice will solicit applications for the $125 million available in FY 2002 and the $150 million that is the guaranteed level of funding for FY 2003.

Because recipients of JARC funds have expressed the need for multi-year funding through the early stages of implementation, FTA will no longer limit awards to a single year, but rather will consider multi-year funding in appropriate cases. To give effect to this new policy, FTA will give priority to funding continuation of previously selected projects. FTA will solicit applications for continued funding from those applicants previously funded under the JARC program. Grantees may apply for up to two additional years of continuation funding beyond that previously approved. Continuation does not include expansion of services beyond those previously funded. Expanded services will be treated as new projects. Continuation projects are expected to document their progress through their most recent progress report. Evaluation of JARC projects' progress will be a key element in determining continued FTA financial support.

FTA will solicit applications for new JARC projects both from existing recipients and from States, localities and nonprofit organizations that have not previously been awarded JARC funds. Because FY 2003 is the last year of the TEA–21 authorization of the JARC program, applicants for new projects will be encouraged to apply for a level of funding that would allow them to sustain service for at least two years.

Applicants identified in the FY 2002 Conference Report must participate in this application process along with all other applicants. FTA will evaluate and rank all projects submitted in response to this new solicitation. Because it is expected that FY 2002 funds will be used primarily, if not entirely, for continuation projects, it is expected that new projects will not be funded until FY 2003 funds become available.

The JARC program, established under TEA–21, provides funding for the provision of transportation services designed to increase access to jobs and employment-related activities. Job Access projects are those that transport welfare recipients and low-income individuals, including economically disadvantaged persons with disabilities, in urban, suburban, or rural areas to and from jobs and activities related to their employment. Reverse Commute projects provide transportation services for the general public from urban, suburban, and rural areas to suburban employment opportunities. A total of up to $10,000,000 from the appropriation can be used for Reverse Commute Projects.

One of the goals of the JARC program is to increase collaboration among transportation providers, human service agencies, employers, metropolitan planning organizations, States, and affected communities and individuals. All projects funded under this program must be derived from an area-wide Job Access and Reverse Commute Transportation Plan, developed through a regional approach which supports the implementation of a variety of transportation services designed to connect welfare recipients to jobs and related activities. A key element of the program is making the most efficient use of existing public, nonprofit and private transportation service providers.

XI. Over-the-Road Bus Accessibility Program

The amount made available for the Over-the-Road Bus Accessibility (OTRB) Program in the FY 2002 DOT Appropriations Act is $6,950,000, which is the guaranteed funding level under TEA–21. Of this amount, $5,250,000 is available to providers of intercity fixed-route service, and $1,700,000 is available to other providers of over-the-road bus services, including local fixed-route service, commuter service, and charter and tour service.

The OTRB program authorizes FTA to make grants to operators of over-the-road buses to help finance the incremental capital and training costs of complying with the DOT over-the-road bus accessibility final rule, published on September 28, 1998 (63 FR 51670). Funds will be provided at 90 percent Federal share. FTA conducts a national solicitation of applications and grantees are selected on a competitive basis.

In FY 2001, a total of $3 million was available to intercity fixed-route

providers and $1.7 million was available to all other providers. FTA selected 61 applicants from among the 84 applications submitted for funding incremental capital and training costs of complying with DOT's OTRB Accessibility requirements.

A separate **Federal Register** Notice providing program guidance and application procedures for FY 2002 will be issued.

XII. Clean Fuels Formula Program

TEA–21 established the Clean Fuels Formula Grant Program under section 5308 of Title 49 U.S.C., to assist non-attainment and maintenance areas in achieving or maintaining attainment status and to support markets for emerging clean fuel technologies. Under the program, public transit agencies in maintenance and non-attainment areas (as defined by the EPA) are to apply for formula funds to acquire clean fuel vehicles. The legislation specified the program to be funded with $50 million from the bus category of the Capital Investment Program, and $50 million from the Urbanized Area Formula Program in each fiscal year of TEA–21. However, congressional appropriation actions in this fiscal year as well as in fiscal years 1999, 2000, and 2001 have provided no funds for this program.

A Notice of Proposed Rulemaking was published in the **Federal Register** on August 28, 2001 (66 FR 45561). The proposed rule establishes the procedures potential recipients must use to apply for this program. Comments on the proposed rule were due October 12, 2001. Responses to those comments and preparation of the final rule are in progress.

For further information contact Nancy Grubb, FTA Office of Resource Management and State Programs, at (202) 366–2053.

XIII. National Planning and Research Program

The amount made available to the National Planning and Research Program in the FY 2002 DOT Appropriations Act is $31,500,000, of which Congress allocated $15,500,000 for specific activities. These allocations are listed in Table 11.

The program's core effort is the deployment of technological innovation to improve personal mobility, enhance the safety and security of transit operations, minimize fuel consumption and air pollution, increase ridership and enhance the quality of life of all communities. Emphasis is placed on mainstreaming proven cost-effective technological innovation through the FTA planning and capital assistance programs. Primary target areas are security technologies to protect against weapons of mass destruction, safety systems for railroad grade crossing protection and shared-track operations, cost reduction in advances in bus technology, and bus rapid transit.

FTA is directing resources for research, development, demonstration and deployment activities associated with technology and other innovations in four priority areas:

- Safety and security systems—to improve driver operations, minimize pedestrian conflicts, reduce terrorist threats and to facilitate shared track operations;
- Transit buses—to reduce operating and maintenance costs through improved energy management; to introduce rapid bus operations; to foster trade opportunities; to deploy low emission vehicles; and to leverage the $600 million or more invested annually through the FTA Bus capital assistance program;
- Infrastructure—to support the $4.9 billion annual FTA capital investment; to protect the integrity of federally supported assets; and to facilitate the deployment of lower cost systems options for expanding capacity; and
- Knowledge Management—to expand U.S. transit industry professional capacity and participation in global markets.

For additional information contact Henry Nejako, Program Management Officer, Office of Research, Demonstration and Innovation, at (202) 366–3765.

XIV. Unit Values of Data for Urbanized Area Formula Program, Nonurbanized Area Formula Program, and Fixed Guideway Modernization

The dollar unit values of data derived from the computations of the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, and the Capital Investment Program—Fixed Guideway Modernization apportionments are displayed in Table 15 of this notice. To replicate an area's apportionment amount multiply its population, population density, and data from the NTD by the appropriate unit value.

XV. Period of Availability of Funds

The funds apportioned under the Metropolitan Planning Program and the Statewide Planning and Research Program, the Urbanized Area Formula Program, and Fixed Guideway Modernization, in this notice, will remain available to be obligated by FTA to recipients for three fiscal years following FY 2002. Any of these apportioned funds unobligated at the close of business on September 30, 2005, will revert to FTA for reapportionment under the respective program.

Funds apportioned to nonurbanized areas under the Nonurbanized Area Formula Program, including RTAP funds, will remain available for two fiscal years following FY 2002. Any such funds remaining unobligated at the close of business on September 30, 2004, will revert to FTA for reapportionment among the States under the Nonurbanized Area Formula Program. Funds allocated to States under the Elderly and Persons with Disabilities Program in this notice must be obligated by September 30, 2002. Any such funds remaining unobligated as of this date will revert to FTA for reapportionment among the States under the Elderly and Persons with Disabilities Program. The FY 2002 DOT Appropriations Act includes a provision requiring that FY 2002 New Starts and Bus funds not obligated for their original purpose as of September 30, 2004, shall be made available for other projects under 49 U.S.C. 5309.

JARC funds for projects selected by FTA for funding in FY 2002 will remain available for two fiscal years following FY 2002. Any such funds remaining unobligated at the close of business on September 30, 2004, will revert to FTA for reallocation under the JARC program.

Capital Investment Program funds for New Starts and Bus projects identified as having been extended in the FY 2002 Conference Report accompanying the FY 2002 DOT Appropriations Act will lapse September 30, 2002.

XVI. Automatic Pre-Award Authority to Incur Project Costs

A. Policy

FTA provides blanket or automatic pre-award authority to cover certain program areas described below. This pre-award authority allows grantees to incur project costs prior to grant approval and retain their eligibility for subsequent reimbursement after grant approval. The grantee assumes all risk and is responsible for ensuring that all conditions, which are described below, are met to retain eligibility. This automatic pre-award spending authority permits a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects. Prior to exercising pre-award authority, grantees must comply with the conditions and Federal requirements outlined in

paragraphs B and C immediately below. Failure to do so will render an otherwise eligible project ineligible for FTA financial assistance. In addition, grantees are strongly encouraged to consult with the appropriate FTA regional office if there is any question regarding the eligibility of the project for future FTA funds or the applicability of the conditions and Federal requirements.

Pre-award authority was extended in the June 24, 1998 **Federal Register** Notice on TEA–21 to all formula funds and flexible funds that will be apportioned during the authorization period of TEA–21, 1998–2003. Pre-award authority also applies to Capital Investment Bus allocations identified in this notice. For such section 5309 Capital Investment Bus projects, the date that costs may be incurred is the date that the appropriation bill in which they are contained is enacted. Pre-award authority does not apply to Capital New Start funds, or to Capital Investment Bus projects not specified in this or previous notices, except as described in D below.

B. Conditions

Similar to the FTA Letter of No Prejudice (LONP) authority, the conditions under which this authority may be utilized are specified below:

(1) The pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2) All FTA statutory, procedural, and contractual requirements must be met.

(3) No action will be taken by the grantee that prejudices the legal and administrative findings that the Federal Transit Administrator must make in order to approve a project.

(4) Local funds expended by the grantee pursuant to and after the date of the pre-award authority will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).

(5) The Federal amount of any future FTA assistance awarded to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.

(6) For funds to which the pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.

(7) The Financial Status Report, in TEAM–Web, must indicate the use of pre-award authority.

C. Environmental, Planning, and Other Federal Requirements

FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed before State or local funds are spent on implementing activities such as final design, construction, and acquisition for a project that is expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA environmental regulations (23 CFR part 771), the grantee may not advance the project beyond planning and preliminary engineering before FTA has issued either a categorical exclusion (refer to 23 CFR part 771.117(d)), a finding of no significant impact, or a record of decision. The conformity requirements of the Clean Air Act (40 CFR part 93) also must be fully met before the project may be advanced with non-Federal funds.

Similarly, the requirement that a project be included in a locally adopted metropolitan transportation improvement program and federally approved statewide transportation improvement program must be followed before the project may be advanced with non-Federal funds. For planning projects, the project must be included in a locally approved Planning Work Program that has been coordinated with the State. In addition, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this increased administrative flexibility requires a grantee to make certain that no Federal requirements are circumvented through the use of pre-award authority. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate regional office.

Before an applicant may incur costs for activities expected to be funded by New Start funds, or for Bus Capital projects not listed in this notice or previous notices, it must first obtain a written LONP from FTA. To obtain an LONP, a grantee must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office.

D. Pre-Award Authority for New Starts Projects

1. Preliminary Engineering and Final Design

New Starts projects are required to follow a federally defined planning process. This process includes, among other things, FTA approval of entry of a project into preliminary engineering and approval to enter final design. The grantee request for entry into preliminary engineering and the request for entry into final design both document the project and how it meets the New Starts statutory criteria for project evaluation and rating in detail. With FTA approval to enter preliminary engineering, and subsequent approval to enter final design, FTA will automatically extend pre-award authority to that phase of project development.

2. Acquisition Activities

In the past, FTA provided applicant grantees pre-award authority to incur costs for right-of-way acquisition for projects funded by sources other than New Starts funds under the conditions described in paragraphs A, B and C, above. With the issuance of this Notice, FTA will extend automatic pre-award authority for the acquisition of real property and real property rights for a New Starts project upon completion of the National Environmental Policy Act (NEPA) review of that project. NEPA review is completed when FTA signs an environmental Record of Decision (ROD) or Finding of No Significant Impact (FONSI), or makes a Categorical Exclusion (CE) determination. The real estate acquisition activities for a proposed New Starts project prior to approval of Federal funding, no longer require a Letter of No Prejudice (LONP) described in section XVII below. Real estate acquisition may now commence upon completion of the NEPA review process.

Most major FTA-assisted projects require the acquisition of residential and/or business properties and the relocation of the occupants. Often real property rights, like railroad track usage rights, are needed. With limited exceptions set forth in FTA's NEPA guidance, the purchase of real property can prejudice the consideration of less damaging alternatives and may not take place until the NEPA process has been completed by FTA's signing of an environmental ROD or FONSI or making a CE determination.

For FTA-assisted projects, acquisition of real property must be made in accordance with the requirements of the Uniform Relocation Assistance and Real

Property Acquisition Policies Act (URA) and its implementing regulations (49 CFR part 24). Compliance with the URA regulations requires substantial lead-time. Properties must be appraised, persons who will be displaced must be educated about their relocation rights, proper housing must be found for displaced residents, and businesses must be relocated in accordance with the URA. In some cases, the remediation of contaminated soils or groundwater, or the removal of underground storage tanks must be dealt with during the acquisition process. Potentially responsible parties to the contamination must be identified and their financial liability negotiated or litigated. Acquisition of railroad right-of-way or usage rights is frequently a negotiated transaction that is fundamental to the transit project and therefore should be negotiated as early as possible after the completion of the NEPA process. Delays in the closing on an acquisition can lead to inconvenience or hardship for residents and businesses that are being displaced. Delays can also lead to increases in property values or in the current owners' financial expectations that prolong negotiated settlements.

To facilitate the acquisition process for New Starts projects, FTA will extend automatic pre-award authority to the acquisition of real property and real property rights with the signing of the environmental ROD or FONSI or the CE determination. This pre-award authority is strictly limited to costs incurred to acquire real property and real property rights and to provide relocation assistance in accordance with the URA regulation. It is limited to the acquisition of real property and real property rights that are explicitly identified in the final EIS, EA or CE determination, as needed for the selected alternative that is the subject of the FTA-signed ROD or FONSI, or the CE determination. It does not cover site preparation, demolition, or any other activity that is not strictly necessary to comply with the URA. At FTA's discretion, these other activities may be covered by Letters of No Prejudice, described in section XVII, below. This pre-award authority does not cover the acquisition of construction equipment or vehicles or any other acquisition except that of real property and real property rights.

Grant applicants should use this pre-award authority for real property very discreetly with a clear understanding that it does not constitute a funding commitment by FTA. On occasion, even projects that received a ''recommended'' rating from FTA under the New Starts regulation (49 CFR part 611) have not received a Full Funding Grant Agreement from FTA simply because the competition for the limited New Starts funds is so intense.

This pre-award authority for the acquisition of real property and real property rights, in accordance with the URA and after FTA's signing of a ROD or FONSI or making a CE determination, is intended to streamline the project delivery process, to enhance relocation services for residents and businesses, and to avoid the escalation in the cost of real property caused by delays in its acquisition. In granting this pre-award authority, FTA is aware that the risk taken by the grant applicant in acquiring real property without an FTA commitment is somewhat mitigated by the re-sale value of the real property, in the event that FTA funding assistance is not ultimately forthcoming and the project is abandoned.

3. National Environmental Policy Act (NEPA) Activities

The National Environmental Policy Act (NEPA) requires that projects with potentially significant adverse impacts proposed for Federal funding assistance be subjected to a public and interagency review of the need for the project, its environmental and community impacts, and alternatives with potentially less damaging actions. Projects for which FTA experience indicates there are no significant impacts are subject to NEPA, but categorically excluded from the more rigorous levels of NEPA review.

FTA regulations (23 CFR 771.105(e)) state that the costs incurred by a grant applicant for the preparation of environmental documents requested by FTA are eligible for FTA assistance. FTA has previously extended pre-award authority to incur costs for environmental reviews and documents from other funding sources but not from New Starts funds.

With issuance of this notice, FTA extends automatic pre-award authority for costs incurred to conduct the NEPA environmental review, including historic preservation activities, and to prepare an EIS, EA, CE, or other environmental documents for a proposed New Starts project, effective as of the date of the federal approval of the relevant Statewide Transportation Improvement Program (STIP) or STIP amendment that includes the project. This pre-award authority applies to New Starts funding, as well as other funding sources. This pre-award authority is strictly limited to costs incurred to conduct the NEPA process and prepare environmental and historic preservation documents. It does not cover preliminary engineering activities beyond those absolutely necessary for NEPA compliance. As with any pre-award authority, FTA participation in costs incurred is not guaranteed.

This pre-award authority for using New Starts funds for environmental and historic preservation work for proposed New Starts projects, as long as those projects are in FTA-approved STIPs, is being provided for the first time with this Notice. It is intended to streamline the NEPA process in accordance with TEA–21 section 1309, ''Environmental Streamlining,'' by eliminating unnecessary delays in starting up the conceptual engineering and environmental reviews, the public involvement process, and the interagency coordination process for New Starts projects.

XVII. Letters of No Prejudice (LONP) Policy

A. Policy

Letter of No Prejudice (LONP) authority allows an applicant to incur costs on a future project utilizing non-Federal resources with the understanding that the costs incurred subsequent to the issuance of the LONP may be reimbursable as eligible expenses or eligible for credit toward the local match should FTA approve the project at a later date. LONPs are applicable to projects not covered by automatic pre-award authority. The majority of LONPs will be for section 5309 New Starts funds not covered under a full funding grant agreement or for section 5309 Bus funds not yet appropriated by Congress. At the end of an authorization period, there may be LONPs for formula funds beyond the life of the current authorization.

Under most circumstances the LONP will cover the total project. Under certain circumstances the LONP may be issued for local match only, for example, to permit real estate purchased as it becomes available to be used for match for the project at a later date.

B. Conditions

The following conditions apply to all LONPs.

(1) LONP pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2) All FTA, DOT, and other Federal statutory, regulatory, procedural, and contractual requirements must be met.

(3) No action will be taken by the grantee that prejudices the legal and

administrative findings that the Federal Transit Administrator must make in order to approve a project.

(4) Local funds expended by the grantee pursuant to and after the date of the LONP will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).

(5) The Federal amount of any future FTA assistance to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.

(6) For funds to which this pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.

C. Environmental, Planning, and Other Federal Requirements

As with automatic pre-award authority, FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed before State or local funds are spent on implementation activities such as final design, construction, or acquisition for a project expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA's environmental regulations (23 CFR part 771), the grantee may not advance the project beyond planning and preliminary engineering before FTA has approved either a categorical exclusion (see 23 CFR section 771.117(d)), a finding of no significant impact, or a record of decision. The conformity requirements of the Clean Air Act (40 CFR part 93) also must be fully met before the project may be advanced with non-Federal funds.

Similarly, the requirement that a capital project be included in a locally adopted metropolitan transportation improvement program and federally approved statewide transportation improvement program must be followed before the project may be advanced with non-Federal funds. For planning projects, the project must be included in a locally approved Planning Work Program that has been coordinated with the State. In addition, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this pre-award authority requires a grantee to make certain that no Federal requirements are circumvented. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate FTA regional office.

D. Request for LONP

Before an applicant may incur costs for a project not covered by automatic pre-award authority, it must first submit a written request for an LONP to the appropriate regional office. This written request must include a description of the project for which pre-award authority is desired and a justification for the request.

XVIII. FTA Home Page on the Internet

FTA provides extended customer service by making available transit information on the FTA Web site, including this Apportionment Notice. Also posted on the Web site are FTA program Circulars: C9030.1C, Urbanized Area Formula Program: Grant Application Instructions, dated October 1, 1998; C9040.1E, Nonurbanized Area Formula Program Guidance and Grant Application Instructions, dated October 1, 1998; C9070.1E, The Elderly and Persons with Disabilities Program Guidance and Application Instructions, dated October 1, 1998; C9300.1A, Capital Program: Grant Application Instructions, dated October 1, 1998; 4220.1D, Third Party Contracting Requirements, dated April 15, 1996; C5010.1C, Grant Management Guidelines, dated October 1, 1998; and C8100.1B, Program Guidance and Application Instructions for Metropolitan Planning Program Grants, dated October 25, 1996. The FY 2002 Annual List of Certifications and Assurances is also posted on the FTA Web site. Other documents on the FTA Web site of particular interest to public transit providers and users include the annual Statistical Summaries of FTA Grant Assistance Programs, and the National Transit Database Profiles.

FTA circulars are listed at *http://www.fta.dot.gov/library/admin/checklist/circulars.htm.* Other guidance of interest to Grantees can be found at *http://www.fta.dot.gov/grantees/index.html.* Grantees should check the FTA Web site frequently to keep up to date on new postings.

XIX. FTA Fiscal Year 2002 Annual List of Certifications and Assurances

The ''Fiscal Year 2002 Annual List of Certifications and Assurances'' is published in conjunction with this notice. It appears as a separate Part of the **Federal Register** on the same date whenever possible. The FY 2002 list contains several changes to the previous year's **Federal Register** publication. As in previous years, the grant applicant should certify electronically. Under certain circumstances the applicant may enter its PIN number in lieu of an electronic signature provided by its attorney, provided the applicant has on file the current affirmation of its attorney in writing dated this Federal fiscal year. The applicant is advised to contact the appropriate FTA Regional Office for electronic procedure information.

The ''Fiscal Year 2002 Annual List of Certifications and Assurances'' is accessible on the Internet at *http://www.fta.dot.gov/library/legal/ca.htm.* Any questions regarding this document may be addressed to the appropriate Regional Office.

XX. Grant Application Procedures

All applications for FTA funds should be submitted to the appropriate FTA Regional Office. FTA utilizes TEAM-Web, an Internet accessible electronic grant application system, and all applications should be filed electronically. FTA has provided exceptions to the requirement for electronic filing of applications for certain new, non-traditional grantees in the Job Access and Reverse Commute and Over-the-Road Bus Accessibility programs as well as to a few grantees that have not successfully connected to or accessed TEAM-Web.

In FY 2001, FTA established a 90-day goal for processing and approving all capital, planning and operating grants, including the section 5307 Urbanized Area Formula Program, section 5309 Fixed Guideway Modernization, New Starts and Bus Programs, the section 5310 Elderly and Persons with Disabilities Program, the section 5311 Nonurbanized Area Formula Program, the TEA–21 Job Access and Reverse Commute Program, the TEA–21 Over-the-Road Bus Accessibility Program, section 5303 Metropolitan Planning Program, and section 5313(b) Statewide Planning and Research Program. The 90-day processing time begins with the receipt of a complete application by the Regional Office. In order for an application to be considered complete, it must meet the following requirements: all projects must be contained in an approved STIP (when required), all environmental findings must be made by FTA, there must be an adequate project description, local share must be secure, all required civil rights submissions must have been submitted, and certifications and assurances must

be properly submitted. Once an application is complete, the FTA Regional Office will assign a project number and when required submit the application to the Department of Labor for a certification under section 5333(b). The FTA circulars referenced below contain more information regarding application contents and complete applications. State applicants for section 5311 are reminded that they must certify to DOL that all subrecipients have agreed to the standard labor protection warranty for section 5311 and provide DOL with other related information for each grant.

Formula and Capital Investment grant applications should be prepared in conformance with the following FTA Circulars: Program Guidance and Application Instructions for Metropolitan Planning Program Grants—C8100.1B, October 25, 1996; Urbanized Area Formula Program: Grant Application Instructions—C9030.1C, October 1, 1998; Nonurbanized Area Formula Program Guidance and Grant Application Instructions—C9040.1E, October 1, 1998; Section 5310 Elderly and Persons with Disabilities Program Guidance and Application Instructions C9070.1E, October 1, 1998; and Section 5309 Capital Program: Grant Application Instructions—C9300.1A, October 1, 1998. Guidance on preparation of applications for State Planning and Research funds may be obtained from each FTA Regional Office. Copies of circulars are available from FTA Regional Offices as well as the FTA Web site.

Applications for grants containing transferred FHWA funds (STP, CMAQ, and others) should be prepared in the same manner as for funds under the program to which they are being transferred. The application for flexible funds needs to specifically indicate the type and amount of flexible funds being transferred to FTA. The application should also describe which items are being funded with transferred funds, consistent with the Statewide Transportation Improvement Program (STIP).

Issued on: December 26, 2001.

Jennifer L. Dorn,

Administrator.

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FEDERAL TRANSIT ADMINISTRATION

TABLE 1

FY 2002 APPROPRIATIONS FOR GRANT PROGRAMS

SOURCE OF FUNDS	APPROPRIATION	
TRANSIT PLANNING AND RESEARCH PROGRAMS		
Section 5303 Metropolitan Planning Program	$55,422,400	
Reapportioned Funds Added	240,571	
Total Apportioned	$55,662,971	
Section 5313(b) State Planning and Research Program	$11,577,600	
Reapportioned Funds Added	121,048	
Total Apportioned	$11,698,648	
Section 5311(b)(2) Rural Transit Assistance Program (RTAP)	$5,250,000	
Reapportioned Funds Added	20,729	
Total Apportioned	$5,270,729	
Section 5314 National Planning and Research Program	$31,500,000	
FORMULA PROGRAMS	$3,542,000,000	a/
Alaska Railroad (Section 5307)	4,849,950	
Less Oversight (one-half percent)	(24,250)	
Total Available	4,825,700	
Section 5308 Clean Fuels Formula Program	(50,000,000)	
Over-the-Road Bus Accessibility Program	6,950,000	
VIII Paralympiad for the Disabled in Salt Lake City	$5,000,000	
Section 5307 Urbanized Area Formula Program		
91.23% of Total Available for Sections 5307, 5311, and 5310	$3,216,040,006	
Less Oversight (one-half percent)	(16,080,200)	
Reapportioned Funds Added	7,092,285	
Total Apportioned	$3,207,052,091	
Section 5311 Nonurbanized Area Formula Program		
6.37% of Total Available for Sections 5307, 5311, and 5310	$224,555,243	
Less Oversight (one-half percent)	(1,122,776)	
Reapportioned Funds Added	2,977,622	
Total Apportioned	$226,410,089	
Section 5310 Elderly and Persons with Disabilities Formula Program		
2.4% of Total Available for Sections 5307, 5311, and 5310	$84,604,801	
Reapportioned Funds Added	325,448	
Total Apportioned	$84,930,249	
CAPITAL INVESTMENT PROGRAM	$2,891,000,000	
Section 5309 Fixed Guideway Modernization	$1,136,400,000	
Less Oversight (one percent)	(11,364,000)	
Reapportioned Funds Added	547,205	
Total Apportioned	$1,125,583,205	
Section 5309 New Starts	$1,136,400,000	
Less Oversight (one percent)	(11,364,000)	
Reallocated Funds Added	1,488,840	b/
Total Allocated	$1,126,524,840	
Section 5309 Bus	$618,200,000	c/
Less Oversight (one percent)	(6,182,000)	
Reallocated Funds Added	1,733,658	d/
Total Allocated	$613,751,658	
JOB ACCESS AND REVERSE COMMUTE PROGRAM (Section 3037, TEA-21)	$125,000,000	
TOTAL APPROPRIATION (Above Grant Programs)	$6,661,750,000	

a/ The FY 2002 DOT Appropriations Act transfers $50 million appropriated for the Cleans Fuels Formula Program to the Section 5309 Bus category.

b/ FY 2002 Conference Report reallocated unobligated balances from specified New Starts projects to FY 2002 projects.

c/ Includes $50 million transferred from the Cleans Fuels Formula Program.

d/ FY 2002 Conference Report supplemented FY 2002 Bus funds with funds made available from projects included in previous Appropriations Acts.

FEDERAL TRANSIT ADMINISTRATION

TABLE 2

FY 2002 SECTION 5303 METROPOLITAN PLANNING PROGRAM
AND SECTION 5313(b) STATEWIDE PLANNING AND RESEARCH PROGRAM APPORTIONMENTS

STATE	SECTION 5303 APPORTIONMENT	SECTION 5313(b) APPORTIONMENT
Alabama	$487,549	$128,085
Alaska	222,652	58,493
Arizona	886,707	184,891
Arkansas	222,652	58,493
California	9,489,958	1,772,769
Colorado	724,233	165,526
Connecticut	650,704	170,947
Delaware	222,652	58,493
District of Columbia	300,176	58,493
Florida	3,035,249	708,491
Georgia	1,074,487	226,984
Hawaii	222,652	58,493
Idaho	222,652	58,493
Illinois	3,252,532	590,223
Indiana	789,613	187,444
Iowa	249,782	65,621
Kansas	288,755	70,908
Kentucky	345,873	88,885
Louisiana	597,687	155,098
Maine	222,652	58,493
Maryland	1,292,294	249,315
Massachusetts	1,576,195	329,294
Michigan	2,030,568	404,621
Minnesota	824,522	165,047
Mississippi	222,652	58,493
Missouri	911,616	193,714
Montana	222,652	58,493
Nebraska	222,652	58,493
Nevada	241,419	63,424
New Hampshire	222,652	58,493
New Jersey	2,759,494	461,499
New Mexico	222,652	58,493
New York	5,603,614	982,654
North Carolina	665,852	174,927
North Dakota	222,652	58,493
Ohio	1,918,238	463,409
Oklahoma	358,870	94,279
Oregon	403,109	98,854
Pennsylvania	2,487,903	501,733
Puerto Rico	603,336	147,944
Rhode Island	222,652	58,493
South Carolina	378,053	99,319
South Dakota	222,652	58,493
Tennessee	587,721	154,401
Texas	3,782,241	791,651
Utah	349,651	91,857
Vermont	222,652	58,493
Virginia	1,244,077	266,598
Washington	991,575	223,786
West Virginia	222,652	58,493
Wisconsin	694,234	171,576
Wyoming	222,652	58,493
TOTAL	$55,662,971	$11,698,648

FEDERAL HIGHWAY ADMINISTRATION

TABLE 3

FY 2002 ESTIMATED METROPOLITAN PLANNING PROGRAM (PL) APPORTIONMENTS

STATE	PL APPORTIONMENT
Alabama	$2,172,212
Alaska	978,212
Arizona	3,135,595
Arkansas	978,212
California	30,064,602
Colorado	2,807,188
Connecticut	2,899,127
Delaware	978,212
District of Columbia	978,212
Florida	12,015,418
Georgia	3,849,460
Hawaii	978,212
Idaho	978,212
Illinois	10,009,701
Indiana	3,178,898
Iowa	1,112,869
Kansas	1,202,535
Kentucky	1,507,419
Louisiana	2,630,335
Maine	978,212
Maryland	4,228,172
Massachusetts	5,584,556
Michigan	6,862,043
Minnesota	2,799,059
Mississippi	978,212
Missouri	3,285,222
Montana	978,212
Nebraska	978,212
Nevada	1,075,613
New Hampshire	978,212
New Jersey	7,826,649
New Mexico	978,212
New York	16,665,004
North Carolina	2,966,619
North Dakota	978,212
Ohio	7,859,037
Oklahoma	1,598,899
Oregon	1,676,482
Pennsylvania	8,508,969
Rhode Island	978,212
South Carolina	1,684,368
South Dakota	978,212
Tennessee	2,618,517
Texas	13,425,756
Utah	1,557,825
Vermont	978,212
Virginia	4,521,283
Washington	3,795,230
West Virginia	978,212
Wisconsin	2,909,780
Wyoming	978,212
TOTAL	$195,642,258

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT	APPORTIONMENT
OVER 1,000,000 IN POPULATION	$23,475,898	$2,347,589,876
200,000-1,000,000 IN POPULATION	5,482,662	548,266,190
50,000-200,000 IN POPULATION	----------	311,196,025
NATIONAL TOTAL	$28,958,560	$3,207,052,091

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT a/	APPORTIONMENT
Amounts Apportioned to Urbanized Areas 1,000,000 and Over in Population:		
Atlanta, GA	$441,438	$44,143,810
Baltimore, MD	368,383	36,838,330
Boston, MA	901,074	90,107,384
Chicago, IL-Northwestern IN	2,008,327	200,832,658
Cincinnati, OH-KY	164,022	16,402,161
Cleveland, OH	273,860	27,385,973
Dallas-Fort Worth, TX	455,083	45,508,300
Denver, CO	304,543	30,454,334
Detroit, MI	391,731	39,173,052
Ft Lauderdale-Hollywood-Pompano Beach, FL.	250,077	25,007,664
Houston, TX	516,633	51,663,288
Kansas City, MO-KS	119,183	11,918,318
Los Angeles, CA	2,223,973	222,397,333
Miami-Hialeah, FL	368,305	36,830,539
Milwaukee, WI	212,130	21,212,977
Minneapolis-St. Paul, MN	366,880	36,688,020
New Orleans, LA	167,235	16,723,529
New York, NY-Northeastern NJ	6,575,248	657,524,791
Norfolk-Virginia Beach-Newport News, VA	155,388	15,538,813
Philadelphia, PA-NJ	1,147,898	114,789,846
Phoenix, AZ	262,326	26,232,617
Pittsburgh, PA	333,816	33,381,559
Portland-Vancouver, OR-WA	281,757	28,175,729
Riverside-San Bernardino, CA	200,791	20,079,119
Sacramento, CA	154,227	15,422,661
San Antonio, TX	196,902	19,690,205
San Diego, CA	474,013	47,401,274
San Francisco-Oakland, CA	1,292,544	129,254,383
San Jose, CA	359,753	35,975,296
San Juan, PR	328,298	32,829,765
Seattle, WA	620,413	62,041,338
St. Louis, MO-IL	265,179	26,517,914
Tampa-St. Petersburg-Clearwater, FL	179,651	17,965,147
Washington, DC-MD-VA	1,114,817	111,481,749
TOTAL	$23,475,898	$2,347,589,876

a/ The amount listed for transit enhancement is included in the apportionment amount for the urbanized area.

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT a/	APPORTIONMENT
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in population		
Akron, OH	$67,208	$6,720,813
Albany-Schenectady-Troy, NY	65,918	6,591,802
Albuquerque, NM	57,876	5,787,566
Allentown-Bethlehem-Easton, PA-NJ	55,040	5,504,045
Anchorage, AK	27,509	2,750,930
Ann Arbor, MI	40,088	4,008,800
Augusta, GA-SC	18,758	1,875,827
Austin, TX	126,897	12,689,720
Bakersfield, CA	42,309	4,230,878
Baton Rouge, LA	43,388	4,338,812
Birmingham, AL	43,205	4,320,461
Bridgeport-Milford, CT	77,463	7,746,314
Buffalo-Niagara Falls, NY	128,390	12,839,011
Canton, OH	36,489	3,648,857
Charleston, SC	36,077	3,607,716
Charlotte, NC	75,799	7,579,873
Chattanooga, TN-GA	24,597	2,459,705
Colorado Springs, CO	40,327	4,032,695
Columbia, SC	28,455	2,845,495
Columbus, GA-AL	17,527	1,752,660
Columbus, OH	122,178	12,217,764
Corpus Christi, TX	37,863	3,786,317
Davenport-Rock Island-Moline, IA-IL	30,920	3,092,040
Dayton, OH	123,444	12,344,382
Daytona Beach, FL	31,286	3,128,630
Des Moines, IA	46,940	4,694,007
Durham, NC	39,789	3,978,926
El Paso, TX-NM	84,725	8,472,495
Fayetteville, NC	20,015	2,001,523
Flint, MI	55,273	5,527,316
Fort Myers-Cape Coral, FL	28,831	2,883,143
Fort Wayne, IN	22,623	2,262,341
Fresno, CA	62,193	6,219,271
Grand Rapids, MI	53,691	5,369,123
Greenville, SC	15,860	1,585,996
Harrisburg, PA	39,490	3,948,953
Hartford-Middletown, CT	102,532	10,253,177
Honolulu, HI	229,127	22,912,703
Indianapolis, IN	99,359	9,935,942
Jackson, MS	20,277	2,027,726
Jacksonville, FL	91,069	9,106,880
Knoxville, TN	28,179	2,817,936
Lansing-East Lansing, MI	39,749	3,974,858
Las Vegas, NV	173,923	17,392,285
Lawrence-Haverhill, MA-NH	37,151	3,715,112
Lexington-Fayette, KY	24,504	2,450,423

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT a/	APPORTIONMENT
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in population (continued)		
Little Rock-North Little Rock, AR	30,836	3,083,572
Lorain-Elyria, OH	17,447	1,744,741
Louisville, KY-IN	110,373	11,037,255
Madison, WI	53,120	5,311,962
McAllen-Edinburg-Mission, TX	17,430	1,743,017
Melbourne-Palm Bay, FL	27,150	2,715,045
Memphis, TN-AR-MS	103,327	10,332,723
Mobile, AL	23,350	2,334,985
Modesto, CA	32,325	3,232,473
Montgomery, AL	14,365	1,436,466
Nashville, TN	53,712	5,371,159
New Haven-Meriden, CT	124,508	12,450,838
Ogden, UT	34,006	3,400,590
Oklahoma City, OK	56,227	5,622,744
Omaha, NE-IA	58,308	5,830,808
Orlando, FL	174,620	17,461,987
Oxnard-Ventura, CA	77,629	7,762,948
Pensacola, FL	22,677	2,267,714
Peoria, IL	23,236	2,323,559
Providence-Pawtucket, RI-MA	169,156	16,915,572
Provo-Orem, UT	32,455	3,245,536
Raleigh, NC	32,901	3,290,068
Reno, NV	36,159	3,615,897
Richmond, VA	68,837	6,883,690
Rochester, NY	77,378	7,737,761
Rockford, IL	20,531	2,053,140
Salt Lake City, UT	150,096	15,009,635
Sarasota-Bradenton, FL	48,669	4,866,942
Scranton-Wilkes-Barre, PA	35,307	3,530,654
Shreveport, LA	27,107	2,710,686
South Bend-Mishawaka, IN-MI	33,690	3,369,027
Spokane, WA	63,461	6,346,128
Springfield, MA-CT	65,656	6,565,574
Stockton, CA	62,513	6,251,267
Syracuse, NY	49,992	4,999,151
Tacoma, WA	114,028	11,402,812
Toledo, OH-MI	54,006	5,400,571
Trenton, NJ-PA	48,387	4,838,684
Tucson, AZ	87,228	8,722,806
Tulsa, OK	49,105	4,910,522
West Palm Beach-Boca Raton-Delray Bch, FL	186,978	18,697,777
Wichita, KS	34,291	3,429,095
Wilmington, DE-NJ-MD-PA	87,820	8,782,003
Worcester, MA-CT	48,812	4,881,171
Youngstown-Warren, OH	29,142	2,914,186
TOTAL	$5,482,662	$548,266,190

a/ The amount listed for transit enhancement is included in the apportionment amount for the urbanized area.

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
Amounts Apportioned to State Governors for Urbanized Areas 50,000 to 200,000 in Population	
ALABAMA:	$5,785,051
Anniston, AL	558,008
Auburn-Opelika, AL	447,690
Decatur, AL	510,952
Dothan, AL	429,160
Florence, AL	597,886
Gadsden, AL	528,431
Huntsville	1,677,473
Tuscaloosa, AL	1,035,451
ALASKA:	$0
ARIZONA:	$1,514,271
Flagstaff, AZ	595,717
Yuma, AZ-CA (AZ)	918,554
ARKANSAS:	$2,210,305
Fayetteville-Springdale, AR	610,005
Fort Smith, AR-OK (AR)	830,384
Pine Bluff, AR	561,156
Texarkana, TX-AR (AR)	208,760
CALIFORNIA:	$33,856,850
Antioch-Pittsburg, CA	1,914,688
Chico, CA	835,991
Davis, CA	1,014,840
Fairfield, CA	1,232,560
Hemet-San Jacinto, CA	1,028,320
Hesperia-Apple Valley-Victorville, CA	1,311,837
Indio-Coachella, CA	621,797
Lancaster-Palmdale, CA	2,206,544
Lodi, CA	863,851
Lompoc, CA	530,538
Merced, CA	943,193
Napa, CA	985,534
Palm Springs, CA	1,227,811
Redding, CA	709,941
Salinas, CA	1,868,225
San Luis Obispo, CA	884,725
Santa Barbara, CA	2,890,232
Santa Cruz, CA	1,494,506
Santa Maria, CA	1,359,716
Santa Rosa, CA	2,636,339
Seaside-Monterey, CA	1,771,565
Simi Valley, CA	1,676,913
Vacaville, CA	1,018,009
Visalia	1,162,789
Watsonville, CA	640,601
Yuba City, CA	1,022,146
Yuma, AZ-CA (CA)	3,639

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
COLORADO:	$6,238,456
Boulder, CO	1,388,149
Fort Collins, C0	1,156,197
Grand Junction, CO	658,293
Greeley, CO	924,745
Longmont, CO	842,710
Pueblo, CO	1,268,362
CONNECTICUT:	$23,327,728
Bristol, CT	983,277
Danbury, CT-NY (CT)	4,145,409
New Britain, CT	1,841,176
New London-Norwich, CT	1,481,607
Norwalk, CT	4,343,565
Stamford, CT-NY (CT)	5,332,682
Waterbury, CT	5,200,012
DELAWARE:	$470,645
Dover, DE	470,645
FLORIDA:	$14,344,243
Deltona, FL	476,941
Fort Pierce, F	1,142,501
Fort Walton Beach, FL	1,107,505
Gainesville, FL	1,419,339
Kissimmee, FL	661,084
Lakeland, FL	1,450,996
Naples, FL	954,953
Ocala, FL	641,486
Panama City, FL	962,695
Punta Gorda, FL	629,544
Spring Hill, FL	481,253
Stuart, FL	839,705
Tallahassee, FL	1,617,975
Titusville, FL.	463,158
Vero Beach, FL	586,573
Winter Haven, FL.	908,535
GEORGIA:	$6,280,272
Albany, GA.	777,891
Athens, GA.	745,818
Brunswick, GA	429,193
Macon, GA.	1,394,248
Rome, GA.	437,538
Savannah, GA	1,824,225
Warner Robins, GA	671,359
HAWAII:	$1,669,130
Kailua, HI	1,669,130

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
IDAHO:	$3,303,509
Boise City, ID	2,021,464
Idaho Falls, ID	724,655
Pocatello, ID	557,390
ILLINOIS:	$15,131,732
Alton, IL	817,765
Aurora, IL	2,290,318
Beloit, WI-IL (IL)	104,517
Bloomington-Normal, IL	1,317,421
Champaign-Urbana, IL	1,859,136
Crystal Lake, IL	746,464
Decatur, IL	1,046,515
Dubuque, IA-IL (IL)	24,377
Elgin, IL	1,652,124
Joliet, IL	1,910,334
Kankakee, IL.	749,751
Round Lake Beach-McHenry, IL-WI (IL)	1,087,960
Springfield, IL.	1,525,050
INDIANA:	$8,825,483
Anderson, IN	713,351
Bloomington, IN	1,064,493
Elkhart-GosheN, IN	1,066,892
Evansville, IN-KY (IN)	1,976,410
Kokomo, IN	718,369
Lafayette-West Lafayette, IN	1,428,159
Muncie, IN	1,049,877
Terre Haute, IN	807,932
IOWA:	$4,804,491
Cedar Rapids, IA	1,493,075
Dubuque, IA-IL (IA)	726,736
Iowa City, IA	860,272
Sioux City, IA-NE-SD (IA)	794,547
Waterloo-Cedar Falls, IA	929,861
KANSAS:	$2,332,729
Lawrence, KS	883,355
St. Joseph, MO-KS (KS)	7,292
Topeka, KS	1,442,082
KENTUCKY:	$1,838,572
Clarksville, TN-KY (KY)	224,344
Evansville, IN-KY (KY)	275,488
Huntington-Ashland, WV-KY-OH ((KY)	549,370
Owensboro, KY	789,370
LOUISIANA:	$5,445,102
Alexandria, LA	794,594
Houma, LA	558,918
Lafayette, LA	1,374,843
Lake Charles, LA	1,104,388
Monroe, LA	1,050,104
Slidell, LA	562,255

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
MAINE:	$2,369,807
Bangor, ME	486,955
Lewiston-Auburn, ME	565,835
Portland, ME	1,209,885
Portsmouth-Dover-Rochester, NH-ME (ME)	107,132
MARYLAND:	$2,635,340
Annapolis, MD	858,335
Cumberland, MD-WV (MD)	456,509
Frederick, MD	619,330
Hagerstown, MD-PA-WV (MD)	701,166
MASSACHUSETTS	$10,437,152
Brockton, MA	1,906,558
Fall River, MA-RI (MA)	1,859,513
Fitchburg-Leominster, MA	753,557
Hyannis, MA	538,120
Lowell, MA-NH (MA)	2,360,019
New Bedford, MA	2,045,072
Pittsfield, MA	487,124
Taunton, MA	487,189
MICHIGAN:	$8,906,650
Battle Creek, MI	743,873
Bay City, MI	831,026
Benton Harbor, MI	601,103
Holland, MI	674,628
Jackson, MI	830,569
Kalamazoo, MI	1,793,576
Muskegon, MI	1,094,007
Port Huron, MI	719,988
Saginaw, MI	1,617,880
MINNESOTA:	$3,174,068
Duluth, MN-WI (MN)	772,388
Fargo-Moorhead, ND-MN (MN)	446,601
Grand Forks, ND-MN (MN)	97,879
La Crosse, WI-MN (MN)	47,947
Rochester, MN	871,176
St. Cloud, MN	938,077
MISSISSIPPI:	$2,725,002
Biloxi-Gulfport, MS	1,687,127
Hattiesburg, MS	525,828
Pascagoula, MS	512,047
MISSOURI:	$3,755,091
Columbia, MO	741,351
Joplin, MO	520,634
Springfield, MO	1,748,930
St. Joseph, MO-KS (MO)	744,176

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
MONTANA:	$2,499,768
Billings, MT	964,059
Great Falls, MT	899,005
Missoula, MT	636,704
NEBRASKA:	$2,778,975
Lincoln, NE	2,658,761
Sioux City, IA-NE-SD (NE)	120,214
NEVADA:	$0
NEW HAMPSHIRE:	$3,374,678
Lowell, MA-NH (NH)	6,907
Manchester, NH	1,414,718
Nashua, NH	1,131,304
Portsmouth-Dover-Rochester, NH-ME (NH)	821,749
NEW JERSEY:	$2,556,942
Atlantic City, NJ	1,842,968
Vineland-Millville, NJ	713,974
NEW MEXICO:	$1,392,393
Las Cruces, NM	773,480
Santa Fe, NM	618,913
NEW YORK:	$7,725,440
Binghamton, NY	1,939,115
Danbury, CT-NY (NY)	26,283
Elmira, NY	796,262
Glens Falls, NY	547,577
Ithaca, NY	552,658
Newburgh, NY	717,643
Poughkeepsie, NY	1,507,504
Stamford, CT-NY (NY)	178
Utica-Rome, NY	1,638,220
NORTH CAROLINA:	$12,541,518
Asheville, NC	968,044
Burlington, NC	702,235
Gastonia, NC	1,028,240
Goldsboro, NC	533,990
Greensboro, NC	2,211,540
Greenville, NC	614,831
Hickory, NC	586,380
High Point, NC	988,854
Jacksonville, NC	954,700
Kannapolis, NC	689,211
Rocky Mount, NC	550,941
Wilmington, NC	901,139
Winston-Salem, NC	1,811,413

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
NORTH DAKOTA:	$2,436,797
Bismarck, ND	702,670
Fargo-Moorhead, ND-MN (ND)	1,016,240
Grand Forks, ND-MN (ND)	717,887
OHIO:	$6,700,060
Hamilton, OH	1,384,842
Huntington-Ashland, WV-KY-OH (OH)	352,655
Lima, OH	756,861
Mansfield, OH	730,720
Middletown, OH	952,155
Newark, OH	580,137
Parkersburg, WV-OH (OH)	85,905
Sharon, PA-OH (OH)	56,648
Springfield, OH	1,101,386
Steubenville-Weirton, OH-WV-PA (OH)	396,238
Wheeling, WV-OH (OH)	302,513
OKLAHOMA:	$1,042,828
Fort Smith, AR-OK (OK)	18,294
Lawton, OK	1,024,534
OREGON:	$5,438,321
Eugene-Springfield, OR	2,559,936
Longview, WA-OR (OR)	17,025
Medford, OR	791,139
Salem, OR	2,070,221
PENNSYLVANIA:	$14,216,739
Altoona, PA	971,201
Erie, PA	2,498,393
Hagerstown, MD-PA-WV (PA)	8,559
Johnstown, PA	895,599
Lancaster, PA	2,258,871
Monessen, PA	614,728
Pottstown, PA	583,344
Reading, PA	2,636,837
Sharon, PA-OH (PA)	408,395
State College, PA	849,968
Steubenville-Weirton, OH-WV-PA (PA)	2,968
Williamsport, PA	712,502
York, PA	1,775,374
PUERTO RICO:	$13,133,260
Aguadilla, PR	1,148,984
Arecibo, PR	1,073,581
Caguas, PR	2,811,557
Cayey, PR	831,273
Humacao, PR	719,451
Mayaguez, PR	1,545,739
Ponce, PR	3,439,733
Vega Baja-Manati, PR	1,562,942

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
RHODE ISLAND:	$835,969
Fall River, MA-RI (RI)	191,640
Newport, RI	644,329
SOUTH CAROLINA:	$3,540,237
Anderson, SC	476,133
Florence, SC	489,740
Myrtle Beach, SC	513,585
Rock Hill, SC	545,317
Spartanburg, SC	950,607
Sumter, SC	564,855
SOUTH DAKOTA:	$1,757,831
Rapid City, SD	559,842
Sioux City, IA-NE-SD (SD)	15,697
Sioux Falls, SD	1,182,292
TENNESSEE:	$2,720,560
Bristol, TN-Bristol, VA (TN)	254,290
Clarksville, TN-KY (TN)	620,004
Jackson, TN	469,284
Johnson City, TN	715,341
Kingsport, TN-VA (TN)	661,641
TEXAS:	$25,189,876
Abilene, TX	893,696
Amarillo, TX	1,657,606
Beaumont, TX	1,140,073
Brownsville, TX	1,657,056
Bryan-College Station, TX	1,109,960
Denton, TX	599,570
Galveston, TX	636,007
Harlingen, TX	814,398
Killeen, TX	1,557,720
Laredo, TX	1,967,344
Lewisville, TX	692,152
Longview, TX	680,991
Lubbock, TX	1,939,424
Midland, TX	849,759
Odessa, TX	942,691
Port Arthur, TX	1,028,333
San Angelo, TX	883,644
Sherman-Denison, TX	442,321
Temple, TX	502,157
Texarkana, TX-AR (TX)	405,200
Texas City, TX	1,077,100
Tyler, TX	842,262
Victoria, TX	583,875
Waco, TX	1,271,990
Wichita Falls, TX	1,014,547

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
UTAH:	$503,466
Logan, UT	503,466
VERMONT:	$883,435
Burlington, VT	883,435
VIRGINIA:	$5,864,195
Bristol, TN-Bristol, VA (VA)	181,037
Charlottesville, VA	843,212
Danville, VA	478,843
Fredericksburg, VA	562,174
Kingsport, TN-VA (VA)	34,179
Lynchburg, VA	802,190
Petersburg, VA	1,016,957
Roanoke, VA	1,945,603
WASHINGTON:	$5,541,766
Bellingham, WA	652,929
Bremerton, WA	1,264,845
Longview, WA-OR (WA)	552,483
Olympia, WA	984,059
Richland-Kennewick-Pasco, WA	1,026,592
Yakima, WA	1,060,858
WEST VIRGINIA	$4,259,126
Charleston, WV	1,713,377
Cumberland, MD-WV (WV)	20,492
Hagerstown, MD-PA-WV (WV)	5,175
Huntington-Ashland, WV-KY-OH (WV)	961,956
Parkersburg, WV-OH (WV)	618,661
Steubenville-Weirton, OH-WV-PA (WV)	266,175
Wheeling, WV-OH (WV)	673,290
WISCONSIN:	$11,659,527
Appleton-Neenah, WI	2,135,066
Beloit, WI-IL (WI)	457,656
Duluth, MN-WI (WI)	200,465
Eau Claire, WI	836,278
Green Bay, WI	1,621,596
Janesville, WI	615,452
Kenosha, WI	1,120,619
La Crosse, WI-MN (WI)	889,641
Oshkosh, WI	776,407
Racine, WI	1,730,797
Round Lake Beach-McHenry, IL-WI (WI)	649
Sheboygan, WI	731,516
Wausau, WI	543,385
WYOMING:	$1,220,639
Casper, WY	559,938
Cheyenne, WY	660,701
TOTAL	$311,196,025

FEDERAL TRANSIT ADMINISTRATION

TABLE 5

FY 2002 SECTION 5311 NONURBANIZED AREA FORMULA APPORTIONMENTS, AND SECTION 5311(b)(2) RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS

STATE	SECTION 5311 APPORTIONMENT	SECTION 5311(b)(2) APPORTIONMENT
Alabama	$5,408,217	$110,761
Alaska	806,482	71,824
America Samoa	114,949	10,973
Arizona	2,367,575	85,033
Arkansas	4,323,645	101,584
California	10,552,607	154,289
Colorado	2,252,560	84,060
Connecticut	2,043,284	82,289
Delaware	509,750	69,313
Florida	6,783,682	122,399
Georgia	7,907,388	131,907
Guam	327,233	12,769
Hawaii	887,484	72,509
Idaho	1,790,472	80,150
Illinois	7,254,587	126,383
Indiana	7,007,767	124,295
Iowa	4,507,465	103,139
Kansas	3,585,545	95,338
Kentucky	5,918,953	115,082
Louisiana	4,895,402	106,422
Maine	2,362,223	84,988
Maryland	2,949,121	89,953
Massachusetts	3,160,562	91,743
Michigan	8,559,342	137,423
Minnesota	4,925,407	106,675
Mississippi	4,806,558	105,670
Missouri	5,736,831	113,541
Montana	1,450,423	77,273
Nebraska	2,188,506	83,518
Nevada	714,514	71,046
New Hampshire	1,891,845	81,008
New Jersey	2,704,938	87,887
New Mexico	2,126,491	82,993
New York	9,521,706	145,566
North Carolina	10,114,864	150,585
North Dakota	1,072,653	74,076
Northern Marianas	106,524	10,901
Ohio	10,297,635	152,132
Oklahoma	4,402,133	102,248
Oregon	3,495,332	94,575
Pennsylvania	11,487,119	162,196
Puerto Rico	3,432,713	94,045
Rhode Island	439,736	68,721
South Carolina	5,062,540	107,836
South Dakota	1,307,480	76,063
Tennessee	6,535,161	120,296
Texas	13,797,540	181,745
Utah	991,142	73,386
Vermont	1,169,000	74,891
Virgin Islands	250,204	12,117
Virginia	5,794,053	114,025
Washington	4,059,820	99,351
West Virginia	3,452,017	94,209
Wisconsin	5,964,681	115,469
Wyoming	834,228	72,059
TOTAL	$226,410,089	$5,270,729

FEDERAL TRANSIT ADMINISTRATION

TABLE 6

FY 2002 SECTION 5310 ELDERLY AND PERSONS WITH DISABILITIES APPORTIONMENTS

STATE	APPORTIONMENT
Alabama	$1,468,570
Alaska	203,969
America Samoa	53,110
Arizona	1,290,987
Arkansas	1,016,370
California	8,098,711
Colorado	994,098
Connecticut	1,143,839
Delaware	324,346
District of Columbia	321,700
Florida	5,454,489
Georgia	1,913,874
Guam	135,342
Hawaii	421,383
Idaho	431,983
Illinois	3,514,512
Indiana	1,828,609
Iowa	1,095,060
Kansas	912,819
Kentucky	1,406,077
Louisiana	1,410,730
Maine	548,202
Maryland	1,417,554
Massachusetts	2,055,994
Michigan	3,002,256
Minnesota	1,437,996
Mississippi	986,502
Missouri	1,854,865
Montana	393,670
Nebraska	634,064
Nevada	463,453
New Hampshire	436,043
New Jersey	2,474,824
New Mexico	553,754
New York	5,777,160
North Carolina	2,181,039
North Dakota	330,309
Northern Marianas	52,840
Ohio	3,669,212
Oklahoma	1,208,967
Oregon	1,121,700
Pennsylvania	4,405,634
Puerto Rico	1,062,427
Rhode Island	484,395
South Carolina	1,167,523
South Dakota	359,273
Tennessee	1,739,859
Texas	4,551,140
Utah	513,840
Vermont	291,405
Virgin Islands	138,131
Virginia	1,811,275
Washington	1,621,119
West Virginia	844,441
Wisconsin	1,655,754
Wyoming	243,051
TOTAL	$84,930,249

FEDERAL TRANSIT ADMINISTRATION
TABLE 7

FY 2002 SECTION 5309 FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS

STATE	AREA	APPORTIONMENT
AK	Anchorage - Alaska Railroad	$8,974,767 a/
AZ	Phoenix	1,607,863
CA	Los Angeles	32,101,641
CA	Oxnard-Ventura	1,593,794
CA	Riverside-San Bernardino	1,563,469
CA	Sacramento	3,239,800
CA	San Diego	8,359,306
CA	San Francisco	65,623,961
CA	San Jose	12,784,597
CO	Denver	1,962,656
CT	Hartford	1,422,340
CT	Southwestern Connecticut	37,648,244
DC	Washington	63,021,972
DE	Wilmington	931,285
FL	Ft. Lauderdale	2,777,503
FL	Jacksonville	106,261
FL	Miami	11,268,805
FL	Tampa	65,091
FL	West Palm Beach	2,623,003
GA	Atlanta	23,114,533
HI	Honolulu	1,094,132
IL	Chicago/Northwestern Indiana	132,997,580
IN	South Bend	694,918
LA	New Orleans	2,881,274
MA	Boston	66,662,945
MA	Lawrence-Haverhill	1,543,845
MA	Worcester	961,055
MD	Baltimore	8,847,163
MD	Baltimore Commuter Rail	17,862,511
MI	Detroit	487,176
MN	Minneapolis	5,094,649
MO	Kansas City	30,200
MO	St. Louis	4,235,476
NJ	Northeastern New Jersey	82,093,110
NJ	Trenton	1,383,464
NY	Buffalo	1,363,995
NY	New York	348,189,302
OH	Cleveland	12,572,133
OH	Dayton	4,783,739
OR	Portland	4,167,985
PA	Harrisburg	690,631
PA	Philadelphia/Southern New Jersey	91,250,611
PA	Pittsburgh	20,234,323
PR	San Juan	2,313,155
RI/MA	Providence	2,618,454
TN	Chattanooga	81,891
TN	Memphis	247,274
TX	Dallas	920,551
TX	Houston	6,967,030
VA	Norfolk	1,245,892
WA	Seattle	18,765,254
WA	Tacoma	754,108
WI	Madison	756,488
	TOTAL	$1,125,583,205

a/ Includes $7,047,502 set aside in accordance with Section 1124 of Pub. L. 106-554.

FEDERAL TRANSIT ADMINISTRATION

TABLE 8

FY 2002 SECTION 5309 NEW STARTS ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	ALLOCATION
AK/HI	Alaska or Hawaii Ferry Projects	$10,193,175
AK	Wasilla, Alaska, Alternative Route Project	2,475,033
AL	Birmingham, Alabama, Transit Corridor Project	1,980,026
AR	Little Rock, Arkansas, River Rail Project	1,980,026
AZ	Phoenix, arizona, Central Phoenix/East Valley Corridor Project	9,900,131
CA	San Francisco, California, BART Extension to the Airport Project	74,918,042
CA	Los Angeles, California, East Side Corridor Light Rail Transit Project	7,425,098
CA	Los Angeles, California, North Hollywood Extension Project	9,196,783
CA	Sacramento, California, Light Rail Transit Extension Project	324,724
CA	San Diego, California, Mission Valley East Light Rail Project	59,400,785
CA	San Diego, California, Mid Coast Corridor Project	990,013
CA	San Jose, California, Tasman West Light Rail Transit Project	112,204
CA	Oceanside - Escondido, California, Light Rail Extension Project	6,435,085
CA	Stockton, California, Altamont Commuter Rail Project	2,970,039
CA	Yosemite, California, Area Regional Transportation System Project	396,005
CO	Denver, Colorado, Southeast Corridor Light Rail Transit Project	54,450,720
CO	Denver, Colorado, Southwest Corridor Light Rail Transit Project	190,570
CT	Stamford, Connecticut, Urban Transitway Project	4,950,065
FL	Fort Lauderdale, Florida, Tri-County Commuter Rail Upgrades Project	26,730,353
FL	Miami, Florida, South Miami-Dade Busway Extension Project	4,950,065
GA	Atlanta, Georgia, Northline Extension	24,750,327
HI	Honolulu, Hawaii, Bus Rapid Transit Project	11,880,157
IA	Des Moines, Iowa, DSM Bus Feasibility Project	148,502
IA	Iowa, Metrolink Light Rail Feasibility Project	297,004
IA	Sioux City, Iowa, Light Rail Project	1,683,022
IA	Dubuque, Iowa Light Rail Feasibility Project	198,002
IL	Chicago, Illinois, METRA Commuter Rail and Line Extension Projects	54,450,720
IL	Chicago, Illinois, Douglas Branch Reconstruction Project	32,422,929
IL	Chicago, Illinois, Ravenswood Reconstruction Project	2,970,039
IN	Northeast Indianapolis, Indiana, Downtown Corridor Project	2,475,033
IN	Northern Indiana South Shore Commuter Rail Project	2,475,033
LA	New Orleans, Louisiana, Desire Corridor Streetcar Project	1,188,016
LA	New Orleans, Louisiana, Canal Street Car Line Project	14,850,196
MA	Boston, Massachusetts, South Boston Piers Transitway Project	10,525,072
MA	Boston, Massachusetts, Urban Ring Transit Project	495,006
MD	Baltimore, Maryland, Central Light Rail Transit Double Track Project	12,870,170
MD	Baltimore, Maryland, Rail Transit Project	1,485,020
MD	Maryland (MARC) Commuter Rail Improvements Projects	11,880,157
MD	Largo, Maryland, Metrorail Extension Project	54,450,720
MI	Grand Rapids, Michigan, ITP Metro Area, Major Corridor Project	742,510
MN	Minneapolis- Rice, Minnesota, Northstar Corridor Commuter Rail Project	9,900,131
MN	Minneapolis-St. Paul, Minnesota, Hiawatha Corridor Light Rail Transit Project	49,500,654
MO	Johnson County, Kansas-Kansas City, Missouri, I-35 Commuter Rail Project	1,485,020
MO	St. Louis-St. Clair, Missouri, MetroLink Extension Project	27,720,366
NC	Charlotte, North Carolina South Corridor Light Rail Transit Project	6,930,092
NC	Raleigh, North Carolina Triangle Transit Project	8,910,118
NH	Lowell, Massachusetts-Nashua, New Hampshire Commuter Rail Extension Project	2,970,039
NJ	Newark-Elizabeth Rail Link MOS-1 Project	19,800,262
NJ	New Jersey Hudson - Bergen Light Rail Transit Project	139,591,845
NM	Albuquerque, New Mexico, Light Rail Project	990,013

FEDERAL TRANSIT ADMINISTRATION

TABLE 8

FY 2002 SECTION 5309 NEW STARTS ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	ALLOCATION	
NY	Long Island Railroad, New York, East Side Access Project	14,597,169	
NY	New York, New York, Second Avenue Subway Project	1,980,026	
OH	Cleveland, Ohio, Euclid Corridor Transportation Project	5,940,079	
OH	Ohio, Central Ohio North Corridor Rail (COTA) Project	495,006	
OR	Portland, Oregon, Interstate MAX LRT Extension Project	63,360,837	
OR	Washington County, Orego, Wilsonville to Beaverton Commuter Rail Project	495,007	*a/*
PA	Philadelphia, Pennsylvania, Schuykill Valley Metro Project	8,910,118	
PA	Pittsburgh, Pennsylvania, North Shore-Connector Light Rail Transit project	7,920,105	
PA	Pittsburgh, Pennsylvania, Stage II Light Rail Transit Reconstruction Project	17,820,236	
PR	San Juan, Puerto Rico, Tren Urbano Project	39,600,523	
RI	Pawtucket-T.F. Green, Rhode Island, Commuter Rail and Maintenance Facility Project	4,950,065	
TN	Memphis, Tennessee, Medical Center Rail Extension Project	18,978,551	
TN	Nashville, Tennessee, East Corridor Commuter Rail Project	3,960,052	
TX	Dallas, Texas, North Central Light Rail Transit Extension Project	69,300,916	
TX	Forth Worth, Texas, Trinity Railway Express Project	1,980,026	
TX	Houston, Texas, Metro Advanced Transit Project	9,900,131	
UT	Salt Lake City, Utah, University Medical Center Light Rail Transit Extension Project	2,970,039	
UT	Salt Lake City, Utah, CBD to University Light Rail Transit Project	13,860,183	
VA	Dulles Corridor, Virginia, Bus Rapid Transit Project	24,750,327	
VA	Virginia Railway Express Station Improvements Project	2,970,039	
WA	Puget Sound, Washington, RTA Sounder Commuter Rail Project	19,800,262	
WI	Kenosha-Racine-Milwaukee Rail Extension Project	1,980,026	
	TOTAL ALLOCATION	$1,126,524,840	

a/ The provision at Section 322 of the FY 2002 DOT Appropriations Act amends Public Law 105-178, Section 3030(b) to authorize final design and construction.

FEDERAL TRANSIT ADMINISTRATION

TABLE 8A

PRIOR YEAR UNOBLIGATED SECTION 5309 NEW START ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	FY 2000 UNOBLIGATED ALLOCATIONS	FY 2001 UNOBLIGATED ALLOCATIONS	TOTAL UNOBLIGATED ALLOCATION
AK/HI	Hawaii Ferry Project	$0	$5,420,459	$5,420,459
AK	Girdwood, Alaska Commuter Rail Project	4,188,947	14,859,647	19,048,594
AL	Birmingham- Transit Corridor	2,135,786	4,953,216	7,089,002
CA	Hollister/Gilroy Branch Line Rail Extension Project	0	990,644	990,644
CA	Los Angeles-San Diego LOSSAN Corridor Project	981,079	2,971,930	3,953,009
CA	San Diego- Mid-Coast Corridor Project	607,494	0	607,494
CA	San Diego- Oceanside-Escondido Light Rail Project	0	9,906,431	9,906,431
CA	San Jose Tasman West Light Rail Project	0	12,135,379	12,135,379
CA	Stockton-Altamont Commuter Rail	981,079	5,943,859	6,924,938
CA	Orange County-Transitway Project	981,079	1,981,286	2,962,365
CO	Roaring Fork Valley Project	981,079	990,644	1,971,723
CT	Stamford-Fixed Guideway Connector	981,079	7,925,145	8,906,224
DE	Wilmington-Downtown Transit Connector	0	4,953,216	4,953,216
FL	South Miami-Dade Busway Extension	1,471,618	0	1,471,618
FL	Orlando-Central Florida Light Rail Project	0	2,971,930	2,971,930
FL	Pinellas County-Mobility Initiative Project	2,452,697	0	2,452,697
GA	Atlanta-North Line Extension Rail Project	0	24,766,080	24,766,080
GA	Atlanta-South Dekalb Lindbergh Light Rail Project	634,029	0	634,029
HI	Honolulu bus Rapid Transit Project	0	2,476,608	2,476,608
IL	Chicago Metra Commuter Rail Exts. & Upgrades-North Central	14,574,906	14,246,653	28,821,559
IL	Chicago Metra Commuter Rail Exts. & Upgrades-Southwest	708,000	12,120,036	12,828,036
IL	Chicago Metra Commuter Rail Exts. & Upgrades-Union Pacific West	3,055,382	8,305,822	11,361,204
IL	Chicago- Ravenswood Branch Line Project	3,433,775	0	3,433,775
IN	Indianapolis-Northeast Downtown Corridor Project	981,079	2,971,930	3,953,009
MA	Boston-North Shore Corridor	981,079	990,644	1,971,723
MA	Boston-South Boston Piers Transitway	0	4,000,000	4,000,000
MA	Boston-Urban Ring Project	981,079	990,644	1,971,723
MA/NH	Lowell, MA - Nashua, NH Commuter Rail Project	3	1,981,286	1,981,289
MD	MARC Expansion Programs [Silver Spring Intermodal Center & Penn-Camden Rail Connection]	735,809	4,953,215	5,689,024
ME	Calais Branch Rail Line Regional Transit Program	0	990,644	990,644
ME	Portland Marine Highway Project	0	1,981,286	1,981,286
MI	Detroit Metropolitan Airport Light Rail Project	0	495,321	495,321
MN	Minneapolis- Transitways Hiawatha Corridor Project	8,547,567	0	8,547,567
MN	Minneapolis-Twin Cities Transitways Projects	2,943,236	4,953,216	7,896,452
MO	Kansas City Southtown Corridor Project	0	3,467,251	3,467,251
MO	St. Louis-MetroLink Cross County Corridor Project	2,452,697	990,644	3,443,341
NC	Charlotte-North-South Corridor Transitway Project	1,780,575	4,953,216	6,733,791
NC	Raleigh-Durham-Chapel Hill-Triangle Transit Project	0	2,780,586	2,780,586
NJ	Northwest New Jersey-Northeast Pennsylvania Passenger Rail Project	0	990,644	990,644
NJ	West Trenton Rail Project	981,079	1,981,286	2,962,365
NY	New York - Second Avenue Subway	3,000,000		3,000,000
NM	Greater Albuquerque Mass Transit Project	6,867,551	495,321	7,362,872
NM	Santa Fe/El Dorado Rail Link	2,943,236	1,485,965	4,429,201
NV	Clark County RTC Fixed Guideway Project	1,488,750	1,485,965	2,974,715
OH	Canton-Akron-Cleveland Commuter Rail Project	0	1,981,286	1,981,286
OH	Cleveland-Euclid Corridor Improvement Project	0	3,962,572	3,962,572
OH	Dayton-Light Rail Study	981,079	0	981,079
PA	Harrisburg-Capital Area Transit Corridor 1 Commuter Rail	490,539	495,321	985,860

FEDERAL TRANSIT ADMINISTRATION

TABLE 8A

PRIOR YEAR UNOBLIGATED SECTION 5309 NEW START ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	FY 2000 UNOBLIGATED ALLOCATIONS	FY 2001 UNOBLIGATED ALLOCATIONS	TOTAL UNOBLIGATED ALLOCATION	
PA	Philadelphia-Reading SEPTA Schuylkill Valley Metro Project	3,924,315	9,906,431	13,830,746	
PA	Philadelphia-SEPTA Cross County Metro	150	1,981,286	1,981,436	
PA	Pittsburgh-North Shore- Central Business District Corridor	2,443,337	4,953,216	7,396,553	
PR	San Juan, Puerto Rico Tren Urbano	31,394,519	74,298,238	105,692,757	
RI	Pawtucket and T.F. Green Commuter Rail and Maintenance Facility	0	495,321	495,321	
SC	Charleston - Monobeam Corridor Project	2,452,697	0	2,452,697	
TN	Memphis-Medical Center Rail Extension Project	0	3	3	
TN	Nashville-Commuter Rail Project	0	5,883,198	5,883,198	
TX	Austin Capital Metro Light Rail Project	0	990,644	990,644	
TX	Dallas Southeast Corridor Light Rail Project	0	997,800	997,800	
TX	Houston-Advanced Transit Program	2,943,236	2,476,608	5,419,844	d/
TX	Houston Regional Bus Project	0	10,649,414	10,649,414	
VA	Dulles Corridor Project	9,400,368	49,532,158	58,932,526	
VT	Burlington-Bennington (ABRB) Commuter Rail Project	0	1,981,286	1,981,286	
WA	Seattle Central Link Light Rail Project	0	49,532,158	49,532,158	
WA	Spokane-South Valley Corridor Light Rail Project	0	3,962,572	3,962,572	
WI	Kenosha-Racine-Milwaukee Commuter Rail Project	981,079	3,962,572	4,943,651	
	TOTAL UNOBLIGATED ALLOCATION	$127,863,088	$403,479,674	$531,342,762	

Fiscal Years 1998 and 1999 Allocations Extended in Conference Report 107-308

NM	*Albuquerque, NM Light Rail Project*	*$2,954,765*	
OH	*Cleveland-Berea, OH Red Line*	*992,550*	
PA	*Philadelphia-Reading, PA-SEPTA Schuylkill Valley Metro*	*2,977,660*	
VT	*Burlington-Essex Junction Commuter Rail*	*2,883,828*	
VT	*Burlington-Essex Junction Commuter Rail*	*1,985,100*	
	Total Extended Allocations	*$11,793,903*	*e/*

a/ Language in Public Law 106-346 directs that funds remaining unobligated or deobligated for the Miami Metro-Dade Transit east-west multimodal corridor project and the Miami Metro-Dade North 27th Avenue corridor project, as of or after September 30, 2000, are to be made available for the South Miami-Dade Busway Extension.

b/ The provision at Section 323 of the FY 2002 DOT Appropriations Act amends Public Law 105-178, Section 3030(b) to authorize alternative analysis preliminary engineering.

c/ The provision at Section 351 of the FY 2002 DOT Appropriations Act allows all public and private non-federal contributions made on or after January 1, 2000, to be used to meet the non-federal share requirement of any element or phase of this project.

d/ The provision at Section 333 of the FY 2002 DOT Appropriations Act prohibits funds for design or construction of a light rail system in Houston, Texas. Available funds are allowed to be obligated under certain conditions for a Houston, Texas metro advanced transit plan project..

e/ Period of availability for funds extended in FY 2002 Appropriations Act is one additional year and they will lapse September 30, 2002. Projects extended in the FY 2002 Conference Report whose funds were obligated as of September 30, 2001 are not listed.

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
AK	City of Wasilla bus facility	$594,017
AK	Fairbanks buses and bus facility	1,485,044
AK	Fairbanks intermodal facility	2,178,064
AK	Mat-su Community Transit buses and facilities	1,386,041
AK	Port of Anchorage intermodal facility	2,920,586
AK	Port McKenzie buses and bus facilities	1,485,044
AK	Seward intermodal facility	2,772,081
AL	Alabama A&M buses and bus facilities	495,015
AL	Alabama State Dock intermodal passenger and freight terminal	4,950,145
AL	Alabama-Tombigbee Regional Commission buses and vans	445,513
AL	Birmingham-Jefferson County Transit Authority buses	1,980,058
AL	Gadsden Transportation Services	247,507
AL	Huntsville Public Transit intermodel facility	990,029
AL	Montgomery Union Station/Moulton St. intermodal facility and parking	2,970,087
AL	University of North Alabama transit projects	1,980,058
AL	University of South Alabama	2,475,073
AR	Statewide buses and bus facilities for urban, rural, elderly and disabled agencies	4,950,145
AZ	City of Glendale buses	173,255
AZ	Phoenix Regional Public Transportation Authority buses and bus facilities	6,583,693
AZ	Sun Tran CNG replacement buses and facilities	1,732,551
AZ	Tucson intermodal center	2,772,081
CA	AC Transit	495,015
CA	Anaheim Resort transit project	495,015
CA	Antelope Valley transit authority bus facilities	495,015
CA	Belle Vista park and ride	247,507
CA	Boyle Heights bus facility	346,510
CA	City of Burbank shuttle buses	396,012
CA	City of Calabasas CNG smart shuttle	297,009
CA	City of Carpinteria electric-gasoline hybrid bus	495,015
CA	City of Commerce CNG buses and bus facilities	990,029
CA	City of Fresno buses	742,522
CA	City of Monrovia natural gas vehicle fueling facility	267,308
CA	City of Sierra Madre bus replacement	148,504
CA	City of Visalia transit center	2,475,073
CA	Contra Costa Connection buses	346,510
CA	Costa Mesa CNG facility	247,507
CA	County of Amador bus replacement	117,813
CA	County of Calaveras bus fleet replacement	103,953
CA	County of El Dorado bus fleet expansion	470,264
CA	Davis, Sacramento hydrogen bus technology	891,026
CA	El Garces train/intermodal station	1,485,044
CA	Folsom railroad block project	594,017
CA	Foothill Transit, CNG buses and bus facilities	1,237,536
CA	Glendale Beeline CNG buses	297,009
CA	Imperial Valley CNG bus maintenance facility	247,507
CA	Livermore Amador Valley Transit Authority buses and facility	1,485,044
CA	Livermore park and ride	247,507
CA	Los Angeles Metro Transportation Authority rapid buses and bus facilities	3,465,102
CA	Merced County Transit CNG buses	297,009
CA	City of Modesto, bus facilities	198,006
CA	Monterey-Salinas Transit facility	1,485,044
CA	Morongo Basin Transit maintenance and administration facility	990,029
CA	MUNI Central Control Facility	990,029
CA	Municipal Transit Operators Coalition	1,980,058
CA	North Ukiah Transit Center	297,009
CA	Orange County buses	297,009
CA	Palmdale Transportation Center	247,507
CA	Palo Alto intermodal transit center	247,507
CA	Pasadena Area Rapid Transit System	396,012

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
CA	Placer County, CNG bus project	990,029
CA	Sacramento Regional buses and bus facilities	990,029
CA	Sam Trans zero-emissions fuel cell buses	990,029
CA	San Bernardino CNG/LNG buses	371,261
CA	San Dieguito Transportation Cooperative	297,009
CA	San Francisco Municipal buses and bus facilities	3,960,116
CA	San Joaquin Regional Transit District Bus facility	495,015
CA	San Mateo County Transit Districts clean fuel buses	1,485,044
CA	Santa Ana bus base	1,237,536
CA	Santa Barbara hybrid bus rapid transit project	1,980,058
CA	Santa Clara Valley Transportation Authority line 22 articulated buses	594,017
CA	Santa Fe Springs CNG bus replacement	495,015
CA	Sierra Madre Villa & Chinatown intermodal transportation centers	2,970,087
CA	Solano Beach intermodal transit station	495,015
CA	Sonoma County landfill gas conversion facility	495,015
CA	South Pasadena circulator bus	297,009
CA	Sun Line Transit hydrogen refueling station	495,015
CA	Transportation Hub at the Village of Indian Hills	990,029
CA	Yolo County, CNG buses	990,029
CO	Statewide buses and bus facilities	7,672,725
CT	Bridgeport intermodal corridor project	5,197,652
CT	East Haddam transportation vehicles and transit facilities	415,812
CT	Greater New Haven Transit District CNG vehicle project (ConnDOT)	990,029
CT	Hartford-New Britain bus rapid transitway	8,910,261
CT	New Haven bus facility	495,015
DC	Washington Metropolitan Area Transit Authority buses	2,970,087
DC	Fuel cell buses and bus facilities (TEA21)	4,801,641
DE	Statewide buses and bus facilities, Delaware	4,356,128
DE	Wrangle Hill buses and maintenance facility	2,970,087
FL	Broward County alternative vehicle mass transit buses and bus facilities	2,475,073
FL	Central Florida Regional Transportation Authority (LYNX) bus and bus facilities	1,980,058
FL	Duval County/JTA community transportation coordinator program, paratransit vehicles & equipment	990,029
FL	Gainesville Regional Transit System, buses	495,015
FL	Hillsborough Area Transit Authority buses and bus facilities	1,980,058
FL	Jacksonville Transit Authority buses	742,522
FL	Lakeland Citrus connection buses and bus facilities	742,522
FL	Miami Beach development electrowave shuttle service	2,970,087
FL	Miami-Dade bus fleet	1,980,058
FL	Northeast Miami-Dade passenger center	371,261
FL	Palm Tran buses	495,015
FL	Pinellas Suncoast Transit buses, trolleys, and information technology	3,960,116
FL	South Florida Regional Transit buses and bus facilities	3,960,116
FL	South Miami intermodal pedestrian access project	990,029
FL	Tallahassee bus facilities	396,012
FL	TALTRAN intermodal center	594,017
FL	Tri-Rail Cypress Creek intermodal facilities	495,015
FL	VOTRAN buses	2,722,580
FL	Winter Haven Area Transit bus and bus facilities	742,522
GA	Atlanta, Metro Atlanta Rapid Transit Authority clean fuel buses	5,940,174
GA	Chatham Area Transit buses and bus facilities	3,564,104
GA	Cobb County Community Transit bus facilities	990,029
GA	Georgia Department of Transportation replacement buses	990,029
GA	Georgia Regional Transit Authority express bus program	5,940,174
GA	Gwinnett County operations and maintenance facility	495,015
GA	Macon terminal intermodal station	1,485,044
HI	Honolulu buses and bus facilities	7,920,232
HI	Middle Street Transit Center	742,522

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
IA	Cedar Rapids intermodal facility	4,583,834
IA	Statewide bus replacement	4,950,145
ID	Statewide buses, bus facilities, and equipment	3,465,102
IL	Statewide buses and bus facilities	9,335,974
IN	Cherry Street Project multi-modal facility	1,287,038
IN	Indiana bus consortium, buses and bus facilities	3,960,116
IN	Indianapolis downtown transit facility	3,143,342
IN	South Bend Public Transit bus fleet replacement	2,475,073
IN	West Lafayette Transit Project buses and bus facilities	1,732,551
KS	Fort Scott Public Transit buses and bus facilities	297,009
KS	Kansas City Area Transit Authority buses	1,485,044
KS	Statewide buses and bus facilities, Kansas	2,970,087
KS	Topeka Transit transfer center	594,017
KS	Wichita Transit Authority buses	898,946
KY	City of Frankfort transit program buses	95,043
KY	City of Maysville buses	134,644
KY	Leslie County parking structure	1,980,058
KY	Murray-Calloway Transit Authority bus facility	198,006
KY	Pikeville parking and transit facility	4,950,145
KY	Statewide buses and bus facilities	990,029
KY	Audubon Area Community Services buses, vans, cutaways, and bus facilities	198,006
KY	Bluegrass Community Action Services buses, vans, cutaways and bus facilites	594,017
KY	Central Kentucky Community Action Council buses, vans, cutaways and bus facilities	269,288
KY	Community Action Council of Fayette and Lexington buses, vans, cutaways and bus facilities	45,541
KY	Community Action Council of Southern Kentucky buses, vans, cutaways and bus facilities	198,006
KY	Kentucky River Foothills buses, vans, cutaways and bus facilities	134,644
KY	Lake Cumberland Community services buses, vans, cutaways and bus facilities	79,202
KY	Southern and Eastern Kentucky transit vehicles	1,980,058
KY	Transit Authority of Northern Kentucky	1,485,044
KY	Transit Authority of River City buses and bus facilities	1,980,058
LA	Louisiana Public Transit Association buses and bus facilities	
LA	Baton Rouge bus and bus related facilities	658,369
LA	Jefferson Parish bus and bus related facilities	1,321,689
LA	Lafayette bus and bus related facilities	2,240,436
LA	Lake Charles bus and bus related facilities	396,012
LA	Louisiana Department of Transportation bus and bus related facilities	1,183,085
LA	Monroe bus and bus related facilities	529,666
LA	New Orleans bus and bus related facilities	5,140,231
LA	Shreveport bus and bus related facilities	1,450,393
LA	Louisiana State University Health Sciences Center-Shreveport, intermodal parking facility	990,029
LA	St. Bernard Parish intermodal facility	990,029
LA	St. Tammany Parish park and ride	445,513
MA	Attleboro intermodal facilities	990,029
MA	Berkshire Regional Transit Authority buses	742,522
MA	Brockton Intermodal transit center	990,029
MA	Gallagher Intermodal Transportation bus hub and CNG trolleys	990,029
MA	Holyoke Pulse Center	742,522
MA	Merrimack Valley Regional Transit Authority (Amesbury) buses and bus facilities	495,015
MA	Merrimack Valley Regional Transit Authority (Lawrence) buses and bus facilities	495,015
MA	MetroWest buses and bus facilities	495,015
MA	Montachusett intermodal facilities and parking in Fitchburg/N. Leominster	2,475,073
MA	Montachusett Regional Transit Authority bus facilities	99,003
MA	Salem/Beverly Intermodal Center	495,015
MA	Springfield Union Station intermodal facility	3,960,116
ME	Auburn intermodal facility and parking garage	247,507
ME	Statewide buses	2,970,087

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
MD	Statewide buses and bus facilities	8,415,247
MI	Alger County Public Transit	198,006
MI	Antrium County Transportation buses	85,142
MI	Barry County Transit buses	73,262
MI	Bay Area Transit Authority	247,507
MI	Berrien County Department of Planning and Public Works buses	198,006
MI	Blue Water Area Transportation Commission bus facilities	1,485,044
MI	Capital Area Transportation Authority buses, bus facilities, and equipment	2,227,565
MI	Charlevoix County Public Transit	123,754
MI	City of Niles buses and bus facilities	41,581
MI	Crawford County Transportation Authority buses	173,255
MI	Delta County Transit Authority	59,402
MI	Detroit Department of Transportation bus replacement	5,692,667
MI	Eastern UP Transportation Authority	99,003
MI	Flint Mass Transportation Authority replacement buses and vans	1,039,530
MI	Greater Lapeer Transportation Authority bus and bus facilities	346,510
MI	Harbor Transit bus and bus facilities	198,006
MI	Interurban Transit Authority buses	81,182
MI	Interurban Transit Partnership surface transportation center (Grand Rapids)	4,950,145
MI	Ionia Area Transportation Dial-a-Ride	281,168
MI	Isabelia County facilities and equipment	224,737
MI	Kalamazoo County Care-A-Van buses and equipment	128,704
MI	Kalkaska Public Transit buses	247,507
MI	Livingston Essential Transportation Service buses and equipment	244,537
MI	Ludington Transit Facility	495,015
MI	Marquette County Transit Authority buses and bus facility	990,029
MI	Midland County buses	297,009
MI	Milan Public Transit buses	99,003
MI	Muskegon Area Transit System facility	1,633,548
MI	Northern Oakland Transportation Authority	148,504
MI	Otsego County Public Transit	297,009
MI	Sault Ste. Marie dial-a-ride	87,123
MI	Statewide buses and bus facilities	1,980,058
MI	Suburban Mobility Authority for Regional Transportation buses	2,088,961
MI	Van Buren County Public Transit buses	198,996
MN	Duluth Transit Authority buses, bus facilities, and equipment	495,015
MN	Grand Rapids/Gilbert buses and bus facilities	207,906
MN	Greater Minnesota Transit Authority bus, paratransit and transit hub (MNDOT)	3,712,609
MN	Metro transit buses and bus facilities (Twin Cities)	13,365,392
MN	Moorhead buses, bus facilities, and equipment	99,003
MN	Mower County Public Transit Initiative facility	495,015
MN	Rush Line Corridor buses and bus facilities	495,015
MN	St. Cloud buses, bus facilities, and equipment	1,485,044
MS	Brookhaven multi-modal facility	990,029
MS	Harrison county multi-modal facilities and shuttle service	3,960,116
MS	Hattiesburg intermodal facility	3,465,102
MS	Jackson multi-modal transportation center	1,980,058
MO	Cab Care paratransit facility	495,015
MO	Kansas City Area Transit Authority buses and radio equipment	4,455,131
MO	Kansas City bus rapid transit	2,475,073
MO	Missouri Pacific Depot	495,015
MO	OATS buses and bus facilities	1,980,058
MO	Southeast Missouri State, Dunklin, Mississippi, Scott, Stoddard, and Cape Giradeau Counties buses and facilities	1,732,551
MO	Southwest Missouri State University intermodal transfer facility	2,475,073
MO	St. Louis Bi-State Development Authority buses and facilities	3,960,116
MT	Billings Logan international airport bus terminal and facility	1,485,044
MT	Butte-Silver Bow bus facility	495,015
MT	Statewide bus and bus facilities	990,029

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
MT	Area II agency on aging bus facility	544,516
MT	Ravalli County Council on aging bus facility	594,017
NE	Buffalo County buses and maintenance facility	99,003
NV	Las Vegas Boulevard North Corridor BRT, clean diesel-electric buses	1,732,551
NV	Regional Transport Commission of Southern Nevada bus rapid transit	4,455,131
NV	Reno Bus Rapid Transit high-capacity articulated buses	1,485,044
NV	Reno/Sparks buses and bus facilities	3,960,116
NV	Reno Suburban transit coaches	495,015
NH	Granite State Clean Cities Coalition CNG buses and facilities	990,029
NH	Town of Ossipee multimodal visitor center	1,584,046
NJ	Bergen intermodal stations, park and ride and shuttle service	2,326,568
NJ	Middlesex County jitney transit buses	396,012
NJ	Trenton Rail Station rehabilitation	2,475,073
NM	Albuquerque Alvarado Transportation Center (phase II)	1,485,044
NM	Albuqerque buses and paratransit vehicles	495,015
NM	Las Cruces buses	495,015
NM	Las Cruces intermodal transit facility	1,980,058
NM	Santa Fe buses and bus facilities	990,029
NM	Statewide buses and bus facilities	990,029
NM	Village of Taos Ski Valley bus and bus facilities	495,015
NM	West Side Transit facility and buses	3,712,609
NY	Binghamton intermodal terminal	1,980,058
NY	Central New York Regional Transportation Authority	3,217,594
NY	Greater Glens Falls Transit bus facility renovation	495,015
NY	Long Island Rail Road Jamaica intermodal facilities	2,970,087
NY	Martin Street Station	321,759
NY	MTA Long Island buses	1,980,058
NY	Nassau University Medical Center bus service extension	990,029
NY	New Rochelle intermodal center	1,485,044
NY	New York City Dept. of Transportation, CNG buses and facilities	2,475,073
NY	Niagara Frontier Transportation Authority buses	2,475,073
NY	Pelham trolley	257,408
NY	Poughkeepsie intermodal project	990,029
NY	Rochester buses and facilities	990,029
NY	Saratoga Springs intermodal station	1,881,055
NY	Station Plaza commuter parking lot	495,015
NY	Sullivan County Coordinated Public Transportation Service bus facility	495,015
NY	Tompkins Consolidated Area transit center	617,778
NY	Tompkins County replacement buses	1,485,044
NY	Union Station--Oneida County facilities	1,237,536
NY	Westchester County Bee-Line low emission buses	1,485,044
NC	Statewide buses and bus facilities	6,930,203
ND	Statewide buses and bus facilities, and rural transit vehicles	3,465,102
OH	Butler County transit facility	990,029
OH	Dayton, Wright-Dunbar Transit Access Project	2,722,580
OH	Alliance intermodal facility	990,029
OH	Statewide buses and bus facilities, Ohio	8,712,255
OK	Central Oklahoma transit facilities	3,960,116
OK	Oklahoma Department of Transportation transit program buses and bus facilities	2,970,087
OR	Canby Transit buses	198,006
OR	Clackamas County south corridor transit improvements	3,712,609
OR	Fort Clatsop Shuttling system	1,980,058
OR	Lincoln County transportation service district bus garage	74,252
OR	Milwaukee Transit Center	198,006
OR	Rogue Valley Transit District, CNG buses	841,525

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
OR	Salem Area Mass Transit, CNG buses	990,029
OR	Springfield bus transfer station	1,980,058
OR	Tillamook County Transportation District bus facilities	346,510
OR	Wasco County buses (Mid-Columbia Council of Governments)	103,953
PA	Altoona bus facility (TEA-21)	2,970,087
PA	Allentown intermodal transportation center	495,015
PA	Area Transit Authority of North Central PA buses and bus facilities	990,029
PA	Berks Area Reading Transportation Authority buses and bus facilities	2,772,081
PA	Bucks County intermodal facility improvement	742,522
PA	Butler Township multi-modal transfer center	495,015
PA	Callowhill bus garage replacement	3,267,096
PA	Cambria County operations and maintenance facility	742,522
PA	Centre Area Transportation Authority CNG buses	792,023
PA	County of Lackawanna Transit bus facility	495,015
PA	Doylestown Area Regional Transit buses	99,003
PA	Endless Mountain Transportation Authority buses and bus facilities	346,510
PA	Fayette County Transit facility	990,029
PA	Hershey intermodal transportation center	1,237,536
PA	Indiana County Transit Authority buses and bus facilities	495,015
PA	LeHigh and Northampton Transportation Authority bus facility	495,015
PA	Luzerne County Transit Authority buses	297,009
PA	Mid Mon Valley Transit Authority buses and bus facilities	247,507
PA	Mid-County Transit Authority buses and bus facilities	297,009
PA	Monroe County Transit Authority park and ride	594,017
PA	Montgomery County intermodal facility	990,029
PA	Port Authority of Allegheny buses	2,227,565
PA	Red Rose transit transfer center	495,015
PA	Schuylkill Transportation System	396,012
PA	Southeastern Pennsylvania Transportation Authority trackless trolleys	990,029
PA	Somerset County Transpiration System buses	247,507
PA	Wilkes-Barre Intermodal facility	990,029
PA	York County bus replacement	990,029
RI	Providence transportation information center	1,485,044
RI	Statewide buses and bus facilities, Rhode Island	4,455,131
SC	Statewide buses and bus facility	9,900,290
SD	Aberdeen Ride Line buses	99,003
SD	Mobridge Senior Citizen handicap-accessible vehicles	59,402
SD	Oglala Sioux Tribe buses and bus facilities	2,227,565
SD	Rosebud Sioux Tribe transportation vans	54,452
TN	Memphis International Airport intermodal facility	1,722,650
TN	Statewide buses and bus facilities	9,900,290
TX	Abilene bus replacement	495,015
TX	Austin Metrobus	742,522
TX	Brazos Transit ADA compliant buses	396,012
TX	Brazos Transit buses for Texas A & M University	742,522
TX	Brazos Transit buses, intermodal facility, and parking facility	742,522
TX	Brazos Transit park and ride facility	396,012
TX	Brownsville multimodal facility study	99,003
TX	Capital Metro park and ride	495,015
TX	City of Huntsville buses	495,015
TX	Connection Capital Project for Community Transit Facilities	247,507
TX	El Paso buses	495,015
TX	Fort Worth Transportation Authority CNG buses	1,237,536
TX	Fort Worth intermodal center park and ride facility	495,015
TX	Fort Worth 9th Street Transfer Station	1,584,046
TX	Houston Barker Cypress park and ride	4,950,145
TX	Houston Main Street Corridor master plan	495,015
TX	Liberty County buses	371,261

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
TX	San Antonio VIA Metro Transit Authority clean fuel buses	1,732,551
TX	Sun Metro buses and bus facilities	495,015
TX	Texas Tech University buses, park and ride	990,029
TX	Waco Transit maintenance and administration facility	1,633,548
TX	Woodlands District park and ride	495,015
UT	Statewide regional intermodal transportation centers, Utah	2,970,087
UT	Utah Transit Authority and Park City Transit buses	495,015
UT	Utah Transit Authority intermodal terminals	990,029
VA	Colonial Williamsburg CNG buses	990,029
VA	Greater Richmond Transit Downtown Transit Center	990,029
VA	Hampton Roads regional buses	3,465,102
VA	Main Street multi-modal transportation center	2,475,073
VA	Potomac & Rappahannock Transportation Commission buses	2,970,087
VA	Roanoke Area Dial-A-Ride	990,029
VT	Vermont Public Transit alternative fuel/hybrid buses and facility	1,980,058
VI	Virgin Islands Transit (VITRAN) buses	495,015
WA	Bellevue Transportation Center	1,584,046
WA	City of Kent facility/Sound Transit, transit and transit-related facilities	891,026
WA	Everett Transit buses and vans	1,732,551
WA	I-5 Trade Corridor/99th St facility	3,663,107
WA	Issaquah Highlands park and ride	1,980,058
WA	King County Transit Oriented Development Projects	990,029
WA	Mukilteo multi-modal terminal and ferry	1,435,542
WA	Pierce Transit buses, vans, and equipment	2,475,073
WA	Snohomish county transit buses and bus facilities	1,980,058
WA	Spokane Transit Authority, buses and bus facilities	990,029
WA	Sound Transit regional transit hubs	9,405,276
WA	Statewide small transit systems, buses, and bus facilities, Washington	28,711
WA	Clallam Transit buses and bus facilities	435,613
WA	Grays Harbor Transportation buses and bus facilities	918,747
WA	Island Transit buses and bus facilities	625,698
WA	Link Transit buses and bus facilities	332,650
WA	Mason County Transportation Authority buses and bus facilities	381,161
WA	Valley Transit buses and bus facilities	742,522
WV	Huntington Tri-State Authority bus facility	742,522
WV	Morgantown Intermodal parking facility	1,980,058
WV	Statewide buses and bus facilities	3,960,116
WI	Statewide buses, bus facilities, and equipment	13,860,363
WY	Statewide buses and bus facilities	2,475,073
WY	Southern Teton Area Rapid Transit bus facility	495,015
	TOTAL ALLOCATION	$613,751,658

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
FY 2000 Unobligated Allocations		
AK	Anchorage , Intermodal Facility	$4,414,928
AK	Fairbanks, Intermodal rail/bus transfer facility	1,947,190
AK	Juneau, Downtown mass transit facility	1,471,643
AK	Wasilla , Intermodal facility	981,096
AL	Birmingham-Jefferson County, Buses	1,226,369
AL	Dothan Wiregrass, Vehicles and transit facility	484,926
AL	Huntsville, Space and Rocket Center intermodal center	3,433,833
AL	Jefferson/Montevallo, Pedestrian walkway	196,219
AL	Mobile, Waterfront terminal complex	4,905,476
AL	Montgomery, Union Station intermodal center and buses	3,433,833
AL	Wilcox County, Gees Bend Ferry facilities	98,110
CA	Bell, Buses and bus facilities	196,219
CA	Commerce, Buses and bus facilities	353,194
CA	Cudahy, Buses and bus facilities	117,731
CA	Lodi, Multimodal facility	833,931
CA	Los Angeles County, Foothill Transit Buses and HEV vehicles	92,736
CA	Maywood, Buses and bus facilities	117,731
CA	Norwalk, I-5 Corridor Intermodal transit centers	1,226,369
CA	Redlands, trolley project	784,876
CA	San Bernardino, train station	2,943,286
CA	Santa Clarita , Bus maintenance facility	1,226,369
CA	Santa Clarita , Bus maintenance facility	741,525
CA	Santa Cruz, Buses and bus facilities	1,721,822
CA	Santa Maria Valley/Santa Barbara County, Buses	235,463
CA	Westminster, senior citizen vans	147,164
CO	Colorado, Buses and bus facilities	1,044,588
DC	Georgetown University, Fuel Cell bus and bus facilities program	123,716
DC	Washington, D.C., Intermodal Transportation Center, District	2,452,738
FL	Miami Beach, electric shuttle service	735,821
GA	Chatham, Area Transit bus transfer center and buses	3,433,833
GA	Georgia, Regional Transportation Authority buses	1,962,190
HI	Hawaii , buses and bus facilities	1,000,000
IA	Cedar Rapids, intermodal facility	3,276,857
IA	Fort Dodge, Intermodal Facility (Phase II)	60,148
IL	East Moline transit center	637,712
IL	Illinois statewide buses and bus-related equipment	866,492
IN	Gary, Transit Consortium buses	306,593
KS	Girard, buses and vans	686,767
KS	Girard Southeast Kansas Community Action Agency maintenance facility	470,926
LA	Baton Rouge, buses and bus-related facilities	294,329
LA	Jefferson Parish, buses and bus-related facilities	44,149
LA	Monroe, buses and bus-related facilities	284,518
MA	Greenfield Montague, buses	490,547
MA	Merrimack Valley Regional Transit Authority bus facilities	458,662
MA	Pittsfield intermodal center	3,531,943
MA	Swampscott, buses	63,772
MN	Greater Minnesota transit authorities	125,000
MN	Northstar Corridor, Intermodal facilities and buses	916,091

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
MO	Jackson County buses and bus facilities	220,576
MO	Southeast Missouri transportation service rural, elderly, disabled service	661,569
MO	Southwest Missouri State University park and ride facility	981,096
MO	St. Louis, Bi-state Intermodal Center	1,226,369
MS	Harrison County multimodal center	2,943,286
MS	North Delta planning and development district, buses and bus facilities	1,177,314
ND	North Dakota statewide bus and bus facilities	208,057
NH	New Hampshire statewide transit systems	2,943,286
NJ	New Jersey Transit alternative fuel buses	4,905,476
NJ	New Jersey Transit jitney shuttle buses	1,716,916
NJ	Newark intermodal and arena access improvements	1,618,807
NJ	Newark, Morris & Essex Station access and buses	1,226,369
NJ	South Amboy, Regional Intermodal Transportation Initiative	1,226,369
NM	Las Cruces buses and bus facilities	279,321
NM	*Northern New Mexico park and ride facilities and State of New Mexico, Buses and Bus-Related Facilities*	*2,698,012 a/*
NV	Lake Tahoe CNG buses	686,767
NV	Washoe County transit improvements	25,661
NY	Buffalo, Auditorium Intermodal Center	1,962,190
NY	Ithaca intermodal transportation center	1,103,732
NY	Putnam County, vans	461,115
OK	Oklahoma statewide bus facilities and buses	231,250
OR	Lincoln County Transit District buses	245,274
OR	South Metro Area Rapid Transit (SMART) maintenance facility	196,219
PA	City of Johnstown, intermodal facilities and buses	800,000
PA	Fayette County, intermodal facilities and buses	445,991
PA	Philadelphia, Intermodal 30th Street Station	1,226,369
PA	Somerset County bus facilities and buses	171,691
PA	Towamencin Township, Intermodal Bus Transportation Center	1,471,643
PA	Washington County intermodal facilities, bus and bus related facilities	618,089
PA	Wilkes-Barre, Intermodal Facility	1,226,369
SC	Central Midlands COG/Columbia transit system	769,210
SC	Florence, Pee Dee buses and facilities	882,986
SC	Greenville transit authority	490,547
SC	Santee-Wateree regional transportation authority	392,438
SC	South Carolina Statewide Virtual Transit Enterprise	1,196,936
SC	Transit Management of Spartanburg, Incorporated (SPARTA)	588,657
SD	South Dakota statewide bus facilities and buses	1,471,643
TN	*Southern Coalition for Advanced Transportation (SCAT) (TN, GA, FL, AL)*	*3,433,833 b/*
VA	Alexandria, bus maintenance facility	490,548
VA	Alexandria, Transit Center	981,096
VA	Fair Lakes League	196,219
VA	Northern Virginia, Dulles Corridor Park-and-Ride Express Bus Program	1,962,190
VA	Richmond, GRTC bus maintenance facility	1,226,369
VT	Burlington multimodal center	2,648,955
VT	Essex Junction multimodal station rehabilitation	490,547
VT	*Marble Valley Regional Transit District buses*	*245,274 c/*
WA	Grant County, Grant Transit Authority	490,547
WA	Grays Harbor County, buses and equipment	1,226,369
WA	King County Metro Atlantic and Central buses	1,471,643
WA	King County park and ride expansion	1,324,478

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
WA	Pierce County Transit buses and bus facilities	305,606
WA	Sequim, Clallam Transit multimodal center	981,096
WA	Spokane, HEV buses	1,471,643
WV	Parkersburg, intermodal transportation facility	4,414,928
WV	West Virginia Statewide Intermodal facility and buses	573,038
	Subtotal FY 2000 Unobligated Allocations	*$121,231,410*
FY 2001 Unobligated Allocations		
AK	Alaska State Fair park and ride and passenger shuttle system	$990,315
AK	Denali Depot intermodal facility	2,970,945
AK	Fairbanks Bus/Rail Intermodal Facility	3,069,976
AK	Homer Alaska Maritime Wildlife Refuge intermodal and welcome center	841,768
AK	Port McKenzie intermodal facilities	7,427,361
AK	Ship Creek pedestrian and bus facilities and intermodal center/parking garage	4,951,574
AL	Statewide, bus and bus facilities	1,435,956
AL	Birmingham-Jefferson County Transit Authority buses and bus facilities	990,315
AL	University of Alabama Birmingham fuel cell bus	1,980,630
AL	Dothan-Wiregrass Transit Authority buses and bus facilities	742,736
AL	Alabama A&M University buses and bus facilities	498,900
AL	Huntsville International Airport intermodal center	4,951,574
AL	Huntsville Space and Rocket Center intermodal center	1,980,630
AL	Lamar County vans	49,516
AL	Lanett, vans	247,579
AL	Alabama State Docks intermodal passenger and freight facility	990,315 d/
AL	Mobile Waterfront Terminal	4,951,574
AL	University of South Alabama, buses and bus facilities	2,475,787
AL	Montgomery - Moulton Street Intermodal Facility	2,970,945
AL	Montgomery, civil rights trail trolleys	247,579
AL	University of North Alabama, bus and bus facilities	1,980,630
AL	Shelby County, vans	198,063
AL	Tuscaloosa interdisciplinary science building parking and intermodal facility	9,407,991
AR	Central Arkansas Transit Authority, bus and bus facilities	1,044,782
AR	Nevada County, vans and mini-vans	89,128
AR	Pine Bluff, buses	287,192
AR	River Market and College Station Livable Communities Program	1,089,346
AR	State of Arkansas, small rural and elderly and handicapped transit buses and bus facilities	2,446,221
CA	Anaheim, buses and bus facilities	247,579
CA	Brea, buses	148,547
CA	Calabasas, buses	495,157
CA	Commerce, buses	990,315
CA	Compton, buses and bus-related equipment	247,579
CA	Culver City, buses	742,736
CA	El Dorado, buses	495,157
CA	El Segundo, Douglas Street gap closure and intermodal facility	2,079,661
CA	Folsom, transit stations	1,485,472
CA	Fresno, intermodal facilities	495,157
CA	Humboldt County, buses and bus facilities	495,157
CA	City of Livermore, park and ride facility	495,157
CA	Foothill Transit, buses and bus facilities	2,475,787

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
CA	Municipal Transit Operators Coalition, buses	1,980,630
CA	Marin County, bus facilities	901,186
CA	Modesto, bus facility	247,579
CA	Monrovia, electric shuttles	574,383
CA	Monterey Salinas Transit Authority, buses and bus facilities	495,157
CA	Oceanside, intermodal facility	1,980,630
CA	Sunline transit agency, buses	990,315
CA	Placer County, buses and bus facilities	495,157
CA	Playa Vista, shuttle buses and bus-related equipment and facilities	2,970,945
CA	Redlands, trolley project	792,252
CA	Rialto, intermodal facility	544,673
CA	Riverside County, buses	495,157
CA	Sacramento, buses and bus facilities	990,315
CA	San Bernardino, intermodal facility	1,584,503
CA	San Bernardino, train station	594,189
CA	Santa Barbara County, mini-buses	237,676
CA	Santa Clara Valley Transportation Authority, buses	495,157
CA	Santa Clarita, maintenance facility	1,980,630
CA	Santa Cruz, buses and bus facilities	1,534,988
CA	Sonoma County, buses and bus facilities	990,315
CA	Temecula, bus shelters	198,063
CA	Vista, bus center	297,094
CO	Statewide bus and bus facilities	1,903,456
CT	Bridgeport, intermodal center	4,951,574
CT	Hartford/New Britain busway	742,736
CT	New Haven, trolley cars and related equipment	990,315
CT	New London, parade project transit improvements	1,980,630
CT	Norwich bus terminal and pedestrian access	990,315
CT	Waterbury, bus garage	990,315
DC	Georgetown University fuel cell bus program	4,803,027
FL	Statewide bus and bus facilities (including Tallahassee)	4,852,848
GA	Atlanta, buses and bus facilities	1,980,630
GA	Chatham, buses and bus facilities	1,980,630
GA	Cobb County, buses	1,237,894
GA	Georgia Regional Transit Authority, buses and bus facilities	2,970,945
HI	Honolulu bus and bus facility improvements	5,941,889
IA	Ames maintenance facility	1,188,378
IA	Cedar Rapids intermodal facility	1,188,378
IA	Des Moines park and ride	693,221
IA	Dubuque, buses and bus facilities	246,088
IA	Mason City, bus facility	896,235
IA	Sioux City multimodal ground transportation center	1,980,630
IA	Sioux City Trolley system	693,221
IA	Waterloo, buses and bus facilities	531,799
ID	Statewide, bus and bus facilities	1,284,265
IL	Harvey, intermodal facilities and related equipment	247,579
IL	Statewide, bus and bus facilities	5,941,889
IN	Evansville, buses and bus facilities	1,485,472
IN	Greater Lafayette Public Corporation -- Wabash Landing buses and bus facilities	1,485,472
IN	Gary - Adam Benjamin intermodal center	792,252

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
IN	South Bend, buses	2,970,945
IN	West Lafayette, buses and bus facilities	2,079,661
KS	Kansas City, JOBLINKS	247,579
KS	Kansas Department of Transportation, rural transit buses	2,970,945
KS	Wichita, buses and ITS related equipment	327,102
KS	Wyandotte County, buses	247,579
KY	Audubon Area Community Action	188,160
KY	Hardin County, buses	297,094
KY	Lexington, LexTran, buses and bus facilities	3,466,102
KY	Louisville, bus and bus facilities	2,970,945
KY	Pikeville, transit facility	1,944,630
LA	Alexandria buses and vans	38,615
LA	Baton Rouge buses and bus equipment	49,516
LA	Jefferson Parish buses and bus related facilities	19,806
LA	Lafayette buses and bus related facilities	297,094
LA	Lafayette multi-modal facility	1,237,894
LA	Monroe buses and bus related facilities	133,692
LA	New Orleans bus lease-maintenance	1,495,375
LA	Plaquemines Parish ferry	990,315
LA	Shreveport buses	292,143
LA	St. Bernard Parish intermodal facilities	1,237,894
LA	St. Tammany Parish park and ride	14,854
MA	Attleboro, intermodal facilities	990,315
MA	Berkshire, buses and bus facilities	990,315
MA	Beverly and Salem, intermodal station improvements	594,189
MA	Brockton, intermodal center	990,315
MA	Lowell, transit hub and Hale Street bus maintenance/operations center	1,237,894
MA	Merrimack Valley Regional Transit Authority, bus facility	495,157
MA	Montachusett, bus facilities, Leominster	247,579
MA	Montachusett, intermodal facility, Fitchburg	1,361,683
MA	Springfield, intermodal facility	495,157
MA	Woburn, buses and bus facilities	247,579
MD	Statewide bus and bus facilities	7,476,092
ME	Bangor intermodal transportation center	1,485,472
ME	Statewide, bus, bus facilities and ferries	3,961,259
MI	Detroit, buses and bus facilities	2,970,945
MI	SMART community transit, buses and paratransit vehicles	4,085,048
MI	Flint, buses and bus facilities	495,157
MI	Lapeer, multi-modal transportation facility	49,516
MI	Statewide, buses and bus facilities	260,288
MI	Traverse City, transfer station	990,315
MN	St. Cloud, buses and bus facilities	2,104,419
MO	Southeast Missouri Transportation Service bus and bus facilities	990,315
MO	Southwest Missouri State University, intermodal facility	990,315
MO	OATS buses and vans	1,980,630
MO	State of Missouri bus and bus facilities	618,002
MS	Brookhaven multimodal transportation center	990,315
MS	Harrison County, multimodal center	1,485,472
MS	Picayune multimodal center	643,705
MS	State of Mississippi rural transit vehicles and regional transit centers	2,970,945

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
MT	Great Falls Transit district buses and bus facilities	990,315
MT	Missoula Ravalli Transportation Management Association buses	742,736
MT	Blackfoot Indian Reservation bus facility	495,157
ND	Statewide bus and bus facilities	1,901,404
NE	Missouri River pedestrian crossing - Omaha	3,961,259
NJ	Elizabeth Ferry Project	495,157
NJ	New Jersey Transit alternative fuel buses	3,961,259
NJ	Newark Arena bus improvements	3,961,259
NJ	Trenton, train/intermodal station	4,951,574
NM	Angel Fire bus and bus Facilities	742,736
NM	Carlsbad, intermodal facilities	623,898
NM	Clovis, buses and bus facility	1,609,262
NM	Las Cruces, buses	495,157
NM	Valencia County, transportation station improvements	1,237,894
NV	Clark County bus passenger intermodal facility - Henderson	1,980,630
NV	Lake Tahoe CNG buses and fleet conversion	1,980,630
NV	Reno and Sparks, buses and bus facilities	990,315
NV	Washoe County buses and bus facilities	2,970,945
NY	Buffalo, intermodal facility	495,157
NY	Eastchester, Metro North facilities	247,579
NY	Greenport and Sag Harbor, ferries and vans	59,419
NY	Highbridge pedestrian walkway	99,032
NY	Jamaica, intermodal facilities	247,579
NY	Larchmont, intermodal facility	990,315
NY	Suffolk County, senior and handicapped vans	495,157
NY	Sullivan County, buses, bus facilities, and related equipment	1,237,894
NY	Syracuse, buses	3,144,249
NY	Tompkins County, intermodal facility	618,946
NY	Westchester and Duchess counties, vans	198,063
NY	Westchester County, buses	990,315
OH	Columbus Near East transit center	990,315
OH	Ohio Statewide bus and bus facilities	6,442,845
OK	Oklahoma City bus transfer center	2,475,787
OK	Statewide bus and bus facilities	3,961,259
OK	Metropolitan Tulsa Transit Authority pedestrian and streetscape improvements	2,475,787
OR	Albany bus purchase - Linn-Benton transit system	198,063
OR	Sunset Empire Transit District improvements to Clatsop County Intermodal Facility	792,252
OR	Basin Transit System buses	158,451
OR	Sandy buses	217,870
OR	Columbia County ADA buses	108,935
OR	Coos County buses	69,322
OR	Corvallis Transit System operations facility	257,482
OR	Hood River County bus and bus facility	237,676
OR	Lakeview buses	49,516
OR	Philomath buses	39,613
OR	Redmond, buses and vans	49,516
OR	Rogue Valley buses	950,702
OR	Salem Area Transit District buses	1,485,472
OR	South Clackamas Transportation District bus	89,128
OR	South Corridor Transit Center and park and ride facilities in Clackamas County	1,485,472

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
OR	Union County bus	43,574
OR	Wasco County buses	95,070
PA	Allegheny County, buses	247,579
PA	Altoona bus testing facility	2,970,945
PA	Bethlehem intermodal facility	1,485,472
PA	Bradford County, buses and bus facilities	346,315
PA	Bucks County, intermodal facility improvements	1,237,894
PA	Cambria County Transit Authority, maintenance facilities	742,736
PA	Fayette County, maintenance facilities	495,157
PA	Indiana, maintenance facilities	346,610
PA	Lancaster, buses	990,315
PA	Lycoming County, buses and bus facilities	1,980,630
PA	Monroe County, buses and bus facilities	990,315
PA	Phoenixville, transit related improvements	1,237,894
PA	Somerset County, ITS related equipment	99,032
PA	Wilkes-Barre intermodal transportation center	990,315
PA	Area Transit Authority, ITS related activities	1,782,567
SC	Statewide, buses and bus facilities	6,610,351
TN	*Southern Coalition for Advanced Transportation, buses*	*1,980,630*
TN	Statewide, buses and bus facilities	3,961,259
TX	Brazos Transit District, buses	495,157
TX	Corpus Christi, buses and bus facilities	990,315
TX	Forth Worth, buses and bus facilities	2,970,945
TX	Galveston, buses and bus facilities	247,579
TX	Harris County, buses and bus facilities	1,980,630
TX	Houston Metro, Main Street Transit Corridor improvements	990,315
TX	Lubbock, buses and bus facilities	990,315
TX	Texas Rural Transit Vehicle Fleet Replacement Program	3,961,259
TX	Waco, maintenance facility	1,634,019
VA	Charlottesville bus and bus facilities	978,045
VA	Danville bus replacement	56,727
VA	Fair Lakes League	489,023
VA	Fairfax County Transportation Association of Greater Springfield	489,023
VA	Falls Church Bus Rapid Transit Terminus	978,045
VA	Hampton Roads bus and bus facilities	2,445,113
VA	Jamestown/Yorktown and Williamsburg CNG bus	1,467,067
VA	City of Richmond bus and bus facilities	1,956,090
VA	Springfield station improvements	489,023
VT	Bellows Falls Multimodal	1,485,472
VT	Brattleboro multimodal center	2,475,786
VT	Burlington multimodal transportation center	1,485,472
VT	Chittenden County transportation authority	990,315
VT	Central Vermont Transit Authority buses and bus facilities	1,485,472
VT	Vermont Statewide paratransit	1,485,472
WA	Clallam County, transportation center	495,157
WA	Clark County, intermodal facilities	990,315
WA	Ephrata, buses	435,738
WA	Everett, buses	1,485,472
WA	King County Metro Eastgate Park and Ride	2,970,945
WA	King County Metro transit bus and bus facilities	1,980,630

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
WA	Renton/Port Quendall transit project	495,157
WA	Richland, bus maintenance facility	990,315
WA	Snohomish County, buses and bus facilities	990,315
WA	Thurston County, bus-related equipment	1,237,894
WV	Statewide buses and bus facilities	1,980,630
WY	Cheyenne transit and operation facility	911,089
	Subtotal FY 2001 Unobligated Allocations	*$356,327,950*
	TOTAL UNOBLIGATED ALLOCATIONS	**$477,559,360**

Fiscal Years 1998 and 1999 Extended Allocations

AL	*Pritchard, bus and bus facilities*	*$496,250*
AL	*Tuscaloosa Intermodal center*	*1,935,375* e/
CA	*Folsom, multimodal center*	*992,500*
DC	*Washington, D.C., intermodal center*	*2,481,250*
MO	*St. Louis, Bi-state intermodal center*	*1,240,625*
NY	*Buffalo, auditorium intermodal center*	*2,977,000*
PA	*Chambersburg, intermodal facility and transit vehicles*	*913,100*
PA	*Fayette County, buses*	*225,475*
PA	*Red Rose, transit bus terminal*	*992,500*
PA	*Somerset County, bus facilities and buses*	*173,688*
PA	*Towamencin Township, intermodal bus transportation center*	*1,488,750*
PA	*Wilkes-Barre, intermodal facility*	*1,465,794*
PA	*Wilkes-Barre, intermodal facility*	*1,240,625*
	Total Extended Allocations	*$16,622,932* f/

a/ The provision at Section 2901(b) of Conference Report 107-48 "Making Supplemental Appropriations for the Fiscal Year Ending September 30, 2001, and for Other Purposes" amended this project by changing the name from "Northern New Mexico Transit Express/Park and Ride buses" to "Northern New Mexico park and ride facilities and State of New Mexico, Buses and Bus Related Facilities".

b/ The provision at Section 368 of the FY 2002 DOT Appropriations Act directs that funds made available to the southern coalition for advanced transportation (SCAT) in the FY 2000 and FY 2001 DOT Appropriations Acts (Pub. L. 106-69 and 106-346) that remain unobligated shall be transferred to Transit Planning and Research and made available to the electric transit vehicle institute (ETVI) in Tennessee for research administered under the provisions of 49 U.S.C. 5312. FTA will transfer these funds during FY 2002.

c/ The provision at Section 372 of the FY 2002 DOT Appropriations Act amended this project by changing the name from "Killington-Sherburne satellite bus facility" to "Marble Valley Regional Transit District Buses".

d/ The provision at Section 361 of the FY 2002 DOT Appropriations Act amends Section 3030(d)(3) of Public Law 105-178 by adding Alabama State Docks intermodal passenger and freight facility to the intermodal centers eligible for funding under section 5309(m)(1)(C) notwithstanding any other provision of law.

e/ Conference Report 107-48 "Making Supplemental Appropriations for the Fiscal Year Ending September 30, 2001, and for Other Purposes" directs that FTA not reallocate funds provided in the FY 1999 DOT Appropriations Act for this project and that the funds are extended for one additional year. Funds for this project will lapse September 30, 2002.

f/ Period of availability for remaining unobligated funds extended one additional year and will lapse September 30, 2002. Projects extended in the FY 2002 Conference Report whose funds were obligated as of September 30, 2001 are not listed.

FEDERAL TRANSIT ADMINISTRATION

TABLE 10

FY 2002 JOB ACCESS AND REVERSE COMMUTE PROGRAM ALLOCATIONS

STATE	PROJECT AND DESCRIPTION	ALLOCATION
AK	Kenai Peninsula Transit Planning, Alaska	$500,000
AK	MASCOT Matanuska, Susitna Valley, Alaska	200,000
AK	Seward Transit Service, Alaska	200,000
AL	Jefferson County, Alabama	2,000,000
AL	Tuscaloosa, Alabama disabilities advocacy program	1,000,000
AR	Central Arkansas Transit Authority	500,000
AZ	Maricopa County, Arizona	1,200,000
CA	AC Transit, California	2,000,000
CA	Del Norte County, California	700,000
CA	Los Angeles, California	2,000,000
CA	Metropolitan Transportation Commission LIFT Program, California	3,000,000
CA	Sacramento, California	2,000,000
CA	Santa Clara County, California	500,000
CT	State of Connecticut	3,500,000
DE	Delaware Department of Transportation	750,000
DC	Community Transportation Association of America	625,000
DC	Georgetown Metro Connection	1,000,000
DC	Washington Area Metropolitan Transit Authority	2,500,000
FL	Jacksonville Transportation Authority's Choice Ride Program	1,000,000
FL	Hillsborough Area Regional Transit, Tampa, Florida	900,000
FL	Palm Beach County, Florida	500,000
FL	State of Florida, Choice Ride program	1,000,000
GA	Atlanta Regional Commission, Georgia	1,000,000
GA	Chatham, Georgia	1,000,000
GA	Macon-Bibb County, Georgia	400,000
ID	State of Idaho	300,000
IA	State of Iowa	1,700,000
IL	Bloomington to Normal, Illinois, Wheels to Work	500,000
IL	DuPage County, Illinois	500,000
IL	Pace, Illinois suburban buses	561,000
IL	Springfield, Illinois Transportation to employment and self-sufficiency	250,000
IN	Indianapolis Public Transportation Corporation, Indiana (Indyflex)	1,000,000
KS	Topeka, Kansas Metropolitan Transit Authority	600,000
KS	Wichita, Kansas Transit	1,450,000
KS	Wyandotte County/Kansas City, Kansas	1,000,000
LA	Baton Rouge, Louisiana Ways to Work	750,000
MA	Northern Tier Dial-A-Ride, Massachusetts	400,000
MA	Southeastern Massachusetts Regional Transit Authority	100,000
MA	Worchester, Massachusetts	400,000
MD	State of Maryland	5,000,000
MI	Flint, Michigan Mass Transportation Authority	1,000,000
MN	Minneapolis/St. Paul, Minnesota	1,000,000
MO	Metropolitan Kansas City, Missouri	1,000,000
MO	Southeast Missouri Council, Missouri	1,200,000
MO	Workforce Investment Board of Southeast Missouri	800,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 10

FY 2002 JOB ACCESS AND REVERSE COMMUTE PROGRAM ALLOCATIONS

STATE	PROJECT AND DESCRIPTION	ALLOCATION
MO	Workforce Investment Board of Southwest Missouri	600,000
NM	New Mexico State Highway and Transportation Department	2,000,000
NM	Santa Fe, New Mexico	630,000
NV	State of Nevada	300,000
NJ	State of New Jersey	3,000,000
NY	Broome County, New York Transit	500,000
NY	Columbia County, New York	100,000
NY	Genessee-Rochester Regional Transportation Authority, New York	400,000
NY	New York Metropolitan Area Transportation Authority	1,000,000
NY	Sullivan County, New York	400,000
NY	Westchester County, New York	1,000,000
NC	Buncombe County, North Carolina	100,000
NC	Charlotte Area Transit, North Carolina	500,000
ND	Oglala Sioux Tribe, North Dakota	150,000
OH	Central Ohio Transit Authority	1,000,000
OH	Ohio Ways to Work	1,500,000
OH	State of Ohio	1,500,000
OK	Oklahoma Transit Association	5,000,000
OR	Salem Area Transit, Oregon	700,000
OR	Tri-Met Region, Oregon	1,800,000
PA	Lancaster County, Pennsylvania	198,000
PA	Lehigh and Northampton Transportation Authority, Pennsylvania	250,000
PA	Pennsylvania Ways to Work Program	1,500,000
PA	Pittsburgh, Pennsylvania	2,000,000
PA	Port Authority of Allegheny County	2,000,000
PA	Red Rose Transit, Pennsylvania	200,000
PA	SEPTA, Philadelphia, Pennsylvania	6,000,000
PA	State of Pennsylvania	1,500,000
RI	State of Rhode Island	2,000,000
TN	Chattanooga, Tennessee	500,000
TN	State of Tennessee	4,500,000
TN	Tennessee small rural systems	1,000,000
TX	Austin, Texas	500,000
TX	Abilene Texas Citilink Program	150,000
TX	Corpus Christi, Texas	550,000
TX	Galveston, Texas	600,000
VA	Charlottesville, Virginia Jefferson Area United Transportation	375,000
VA	Winchester, Virginia	1,000,000
VT	Burlington Community Land Trust/Good New Garage	850,000
WA	State of Washington	3,000,000
WA	WorkFirst Transportation Initiative, State of Washington	3,000,000
WV	State of West Virginia	800,000
WI	State of Wisconsin	5,200,000
	TOTAL ALLOCATIONS	$109,339,000

FEDERAL TRANSIT ADMINISTRATION

Table 11

FY 2002 NATIONAL PLANNING AND RESEARCH PROGRAM ALLOCATIONS

STATE	PROJECT	ALLOCATION
AL	Center for Composites Manufacturing	$900,000
CA	CALSTART (BRT and Mobility.dot.com)	2,500,000
CA	Santa Barbara Electric Transportation Institute	400,000
FL	University of South Florida rapid bus initiative	250,000
GA	Georgia Regional Transportation Authority/Southern California Association of Governments transit trip planning partnership	400,000
MN	Hennepin County community transportation	1,000,000
MO	Missouri Soybean Association biodiesel transit demo	750,000
ND	North Dakota State University transit center for small urban areas	400,000
MI	Southeast Michigan transportation feasibility study	500,000
NY	Long Island, NY City links study	250,000
TN	Electric Vehicle Institute	500,000
VA	Crystal City-Potomac Yard transit alternatives	250,000
WA	Washington State WestStart innovative transit vehicle	2,000,000
WV	West Virginia transit vehicle exhaust emissions evaluation	1,400,000
----	Joblinks	1,000,000
----	Project ACTION (TEA-21)	3,000,000
	TOTAL ALLOCATIONS	$15,500,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 12

TEA-21 AUTHORIZATION LEVELS (GUARANTEED FUNDING ONLY)

APPROPRIATION / PROGRAM	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	TOTAL
Urbanized Area Formula (Section 5307)	$2,298,852,727	$2,548,190,791	$2,772,890,281	$2,997,316,081	$3,220,601,506	$3,445,939,606	$17,283,790,992
Nonurbanized Area Formula (Section 5311)	134,077,934	177,923,658	193,612,968	209,283,168	224,873,743	240,607,643	1,180,379,114
Elderly and Persons with Disabilities (Section 5310)	62,219,389	67,035,601	72,946,801	78,850,801	84,724,801	90,652,801	456,430,194
Clean Fuels Formula Program (Section 5308)	0	50,000,000	50,000,000	50,000,000	50,000,000	50,000,000	250,000,000
Over the Road Bus Accessibility Program	0	2,000,000	3,700,000	4,700,000	6,950,000	6,950,000	24,300,000
Alaska Railroad (Section 5307)	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	29,099,700
Bus and Bus Related (Section 5309)	400,000,000	451,400,000	490,200,000	529,200,000	568,200,000	607,200,000	3,046,200,000
Fixed Guideway Modernization (Section 5309)	800,000,000	902,800,000	980,400,000	1,058,400,000	1,136,400,000	1,214,400,000	6,092,400,000
New Starts (Section 5309)	800,000,000	902,800,000	980,400,000	1,058,400,000	1,136,400,000	1,214,400,000	6,092,400,000
Job Access and Reverse Commute Program	0	50,000,000	75,000,000	100,000,000	125,000,000	150,000,000	500,000,000
Metropolitan Planning (Section 5303)	39,500,000	43,841,600	49,632,000	52,113,600	55,422,400	60,385,600	300,895,200
State Planning & Research (Section 5313(b))	8,250,000	9,158,400	10,368,000	10,886,400	11,577,600	12,614,400	62,854,800
National Planning & Research (Section 5314)	32,750,000	27,500,000	29,500,000	29,500,000	31,500,000	31,500,000	182,250,000
Rural Transit Assistance (Section 5311(b)(2))	4,500,000	5,250,000	5,250,000	5,250,000	5,250,000	5,250,000	30,750,000
Transit Cooperative Research (Section 5313(a))	4,000,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	45,250,000
National Transit Institute (Section 5315)	3,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	23,000,000
University Transportation Centers (Section 5317(b))	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	36,000,000
Administrative Expenses	45,738,000	54,000,000	60,000,000	64,000,000	67,000,000	73,000,000	363,738,000
FEDERAL TRANSIT ADMINISTRATION TOTAL:	$4,643,738,000	$5,315,000,000	$5,797,000,000	$6,271,000,000	$6,747,000,000	$7,226,000,000	$35,999,738,000

– Fiscal Years 1999-2003 funding for the Clean Fuels Program established under TEA-21 equals $100,000,000. $50,000,000 is shown under the Cleans Fuels Program (Section 5308) and $50,000,000 is included under the Bus and Bus Related (Section 5309).

FEDERAL TRANSIT ADMINISTRATION

TABLE 12A

TEA-21 AUTHORIZATION LEVELS (GUARANTEED AND NONGUARANTEED FUNDING)

APPROPRIATION / PROGRAM	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	TOTAL
Urbanized Area Formula (Section 5307)	$2,298,852,727	$2,698,190,791	$2,922,890,281	$3,147,316,081	$3,370,601,506	$3,595,939,606	$18,033,790,992
Nonurbanized Area Formula (Section 5311)	134,077,934	177,923,658	193,612,968	209,283,168	224,873,743	240,607,643	1,180,379,114
Elderly and Persons with Disabilities (Section 5310)	62,219,389	67,035,601	72,946,801	78,850,801	84,724,801	90,652,801	456,430,194
Clean Fuels Formula Program (Section 5308)	0	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000	750,000,000
Over the Road Bus Accessibility Program	0	2,000,000	3,700,000	4,700,000	6,950,000	6,950,000	24,300,000
Alaska Railroad (Section 5307)	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	29,099,700
Bus and Bus Related (Section 5309)	400,000,000	551,400,000	590,200,000	629,200,000	668,200,000	707,200,000	3,546,200,000
Fixed Guideway Modernization (Section 5309)	800,000,000	1,002,800,000	1,080,400,000	1,158,400,000	1,236,400,000	1,314,400,000	6,592,400,000
New Starts (Section 5309)	800,000,000	1,302,800,000	1,390,400,000	1,478,400,000	1,566,400,000	1,644,400,000	8,182,400,000
Job Access and Reverse Commute Program	0	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000	750,000,000
Metropolitan Planning (Section 5303)	39,500,000	70,312,000	76,929,600	80,238,400	84,374,400	90,164,800	441,519,200
State Planning & Research (Section 5313(b))	8,250,000	14,688,000	16,070,400	16,761,600	17,625,600	18,835,200	92,230,800
National Planning & Research (Section 5314)	32,750,000	58,500,000	60,500,000	62,500,000	64,500,000	65,500,000	344,250,000
Rural Transit Assistance (Section 5311(b)(2))	4,500,000	5,250,000	5,250,000	5,250,000	5,250,000	5,250,000	30,750,000
Transit Cooperative Research (Section 5313(a))	4,000,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	45,250,000
National Transit Institute (Section 5315)	3,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	23,000,000
University Transportation Centers (Section 5317(b))	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	36,000,000
Administrative Expenses	45,738,000	67,000,000	74,000,000	80,000,000	84,000,000	91,000,000	441,738,000
TOTAL FUNDING ALL PROGRAMS:	$4,643,738,000	$6,341,000,000	$6,810,000,000	$7,274,000,000	$7,737,000,000	$8,194,000,000	$40,999,738,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 13

FY 2001 APPORTIONMENT FORMULA FOR FORMULA PROGRAM

Percent of Formula Funds Available

Section 5310:	2.4%	States - allocated to states based on state's population of elderly and persons with disabilities
Section 5311:	6.37%	Nonurbanized Areas - allocated to states based on state's nonurbanized area population
Section 5307:	91.23%	Urbanized Areas (UZA)

UZA Population and Weighting Factors

50,000-199,000 in population :
(Apportioned to Governors)

9.32% of available Section 5307 funds
- *50% apportioned based on population*
- *50% apportioned based on population x population density*

200,000 and greater in population:
(Apportioned to UZAs)

90.68% of available Section 5307 funds

33.29% (Fixed Guideway Tier*)

95.61% (Non-incentive Portion of Tier)
- --- at least 0.75% to each UZA with commuter rail and pop. 750,000 or greater
- 60% - fixed guideway revenue vehicle miles
- 40% - fixed guideway route miles

4.39% ("Incentive" Portion of Tier)
- -- at least 0.75% to each UZA with commuter rail and pop. 750,000 or greater
- -- fixed guideway passenger miles x fixed guideway passenger miles/operating cost

66.71% ("Bus" Tier)

90.8% (Non-incentive Portion of Tier)

73.39% for UZAs with population 1,000,000 or greater
- *50% - bus revenue vehicle miles*
- *25% - population*
- *25% - population x population density*

26.61% for UZAs pop. < 1,000,000
- *50% - bus revenue vehicle miles*
- *25% - population*
- *25% - population x density*

9.2% ("Incentive" Portion of Tier)
- -- bus passenger miles x bus passenger miles/operating cost

*Includes all fixed guideway modes, such as heavy rail, commuter rail, light rail, trolleybus, aerial tramway, inclined plane, cable car, automated guideway transit, ferryboats, exclusive busways, and HOV lanes.

FEDERAL TRANSIT ADMINISTRATION

TABLE 14

FY 1998 - 2003 SECTION 5309 FIXED GUIDEWAY MODERNIZATION PROGRAM APPORTIONMENT FORMULA

Tier 1 First $497,700,000 to the following areas:

Baltimore	$	8,372,000
Boston	$	38,948,000
Chicago/N.W. Indiana	$	78,169,000
Cleveland	$	9,509,500
New Orleans	$	1,730,588
New York	$	176,034,461
N. E. New Jersey	$	50,604,653
Philadelphia/So. New Jersey	$	58,924,764
Pittsburgh	$	13,662,463
San Francisco	$	33,989,571
SW Connecticut	$	27,755,000

Tier 2 Next $70,000,000 as follows: Tier 2(A): 50 percent is allocated to areas identified in Tier 1; Tier 2(B): 50 percent is allocated to other urbanized areas with fixed guideway tiers in operation at least seven years. Funds are allocated by the Urbanized Area Formula Program fixed guideway tier formula factors that were used to apportion funds for the fixed guideway modernization program in FY 1997.

Tier 3 Next $5,700,000 as follows: Pittsburgh 61.76%; Cleveland 10.73%; New Orleans 5.79%; and 21.72% is allocated to all other areas in Tier 2(B) by the same fixed guideway tier formula factors used in fiscal year 1997.

Tier 4 Next $186,600,000 as follows: All eligible areas using the same year fixed guideway tier formula factors used in fiscal year 1997.

Tier 5 Next $70,000,000 as follows: 65% to the 11 areas identified in Tier 1, and 35% to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the database.

Tier 6 Next $50,000,000 as follows: 60% to the 11 areas identified in Tier 1, and 40% to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment less than 7 years old in the year of the apportionment will be deleted from the database.

Tier 7 Remaining amounts as follows: 50% to the 11 areas identified in Tier 1, and 50% to all other areas using the most current Urbanized Area Formula Program fixed guideway formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the database.

FEDERAL TRANSIT ADMINISTRATION

TABLE 15

FISCAL YEAR 2002 FORMULA GRANT APPORTIONMENTS - UNIT VALUES OF DATA

		APPORTIONMENT UNIT VALUE
Section 5307 Urbanized Area Formula Program - Bus Tier		
Urbanized Areas Over 1,000,000:		
Population		$3.39155136
Population x Density		$0.00086987
Bus Revenue Vehicle Mile		$0.41804338
Urbanized Areas Under 1,000,000:		
Population		$3.06502342
Population x Density		$0.00134983
Bus Revenue Vehicle Mile		$0.49502152
Bus Incentive (PM denotes Passenger Mile):		
Bus PM x Bus PM = / Operating Cost		$0.00568461
Section 5307 Urbanized Area Formula Program - Fixed Guideway Tier		
Fixed Guideway Revenue Vehicle Mile		$0.57872024
Fixed Guideway Route Mile		$32,394
Commuter Rail Floor	$6,942,181	
Fixed Guideway Incentive:		
Fixed Guideway PM x Fixed Guideway PM = / Operating Cost		$0.00046828
Commuter Rail Incentive Floor	$318,755	
Section 5307 Urbanized Area Formula Program - Areas Under 200,000		
Population		$5.53721696
Population x Density		$0.00276693
Section 5311 Nonurbanized Area Formula Program		
Areas Under 50,000		
Population		$2.45758671

Section 5309 Capital Program - Fixed Guideway Modernization

	Tier 2	Tier 3	Tier 4	Tier 5	Tier 6	Tier 7
Legislatively Specified Areas:						
Revenue Vehicle Mile	$0.03043443	——	$1.13683131	$0.03701143	$0.02440314	$0.09679444
Route Mile	$2,122.43	——	$7,832.52	$2,778.71	$1,832.12	$7,267.05
Other Urbanized Areas:						
Revenue Vehicle Mile	$0.16377360	$0.00579309	$1.13683131	$0.11255332	$0.09188026	$0.54666114
Route Mile	$4,772.78	$168.83	$7,832.52	$3,125.60	$2,551.51	$15,180.74

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Federal Register

Wednesday,
January 2, 2002

Part II

Department of Transportation

Federal Transit Administration

FTA Fiscal Year 2002 Apportionments, Allocations and Program Information; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 2002 Apportionments, Allocations and Program Information

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) and Related Agencies Appropriations Act for Fiscal Year 2002 (FY 2002 DOT Appropriations Act) (Pub. L. 107–87) was signed into law by President Bush on December 18, 2001, and provides FY 2002 appropriations for the Federal Transit Administration (FTA) transit assistance programs. Based upon this Act, the Transportation Equity Act for the 21st Century (TEA–21), and 49 U.S.C. Chapter 53, this notice contains a comprehensive list of apportionments and allocations for transit programs.

In addition, prior year unobligated allocations for the section 5309 New Starts and Bus Programs are listed. The FTA policy regarding pre-award authority to incur project costs, Letter of No Prejudice Policy, and other pertinent program information are provided.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant-specific information and issues; Mary Martha Churchman, Director, Office of Resource Management and State Programs, (202) 366–2053, for general information about the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, the Rural Transit Assistance Program, the Elderly and Persons with Disabilities Program, the Clean Fuels Formula Program, the Over-the-Road Bus Accessibility Program, the Capital Investment Program, or the Job Access and Reverse Commute Program; or Paul L. Verchinski, Chief, Statewide and Intermodal Planning Division, (202) 366–1626, for general information concerning the Metropolitan Planning Program and the Statewide Planning and Research Program; or Henry Nejako, Program Management Officer, Office of Research, Demonstration and Innovation, (202) 366–3765, for general information about the National Planning and Research Program.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

Metropolitan Planning funds are apportioned by statutory formula to the Governors for allocation to Metropolitan Planning Organizations (MPOs) in urbanized areas or portions thereof to provide funds for their Unified Planning Work Programs. Statewide Planning and Research funds are apportioned to States by statutory formula to provide funds for their Statewide Planning and Research Programs. Urbanized Area Formula Program funds are apportioned by statutory formula to urbanized areas and to Governors to provide capital, operating and planning assistance in urbanized areas. Nonurbanized Area Formula Program funds are apportioned

by statutory formula to Governors for capital, operating and administrative assistance in nonurbanized areas. Elderly and Persons with Disabilities Program funds are apportioned by statutory formula to Governors to provide capital assistance to organizations providing transportation service for the elderly and persons with disabilities. Fixed Guideway Modernization funds are apportioned by statutory formula to specified urbanized areas for capital improvements in rail and other fixed guideways. New Starts identified in the FY 2002 DOT Appropriations Act and Bus Allocations identified in the Conference Report accompanying the Act are included in this notice. FTA will honor those designations included in report language to the extent that the projects meet the statutory intent of the specific program. Job Access and Reverse Commute (JARC) funds are awarded on a competitive basis. JARC projects identified in the FY 2002 DOT Appropriations Act are included in this notice. Over-the-Road Bus Accessibility Program projects are also competitively selected.

II. Overview

A. Fiscal Year 2002 Appropriations

The FY 2002 funding amounts for FTA programs are displayed in Table 1. The following text provides a narrative explanation of the funding levels and other factors affecting the apportionments and allocations.

B. TEA–21 Authorized Program Levels

TEA–21 provides a combination of trust and general fund authorizations that total $7.737 billion for the FY 2002 FTA program. Of this amount, $6.747 billion was guaranteed under the discretionary spending cap and made available in the FY 2002 DOT Appropriations Act. See Table 12 for fiscal years 1998–2003 guaranteed funding levels by program and Table 12A for the total of guaranteed and non-guaranteed levels by program.

Information regarding estimates of the funding levels for FY 2003 by State and urbanized area is available on the FTA Web site. The FY 2003 numbers are intended for planning purposes only but may be used for programming Metropolitan Transportation Improvement Programs and Statewide Transportation Improvement Programs. Actual apportionment figures for FY 2002 are contained in this notice, while apportionment figures for FY 1998–FY 2001 can be found in the appropriate FTA fiscal year apportionment notice, which is available on the FTA Web site.

C. Project Management Oversight

Section 5327 of Title 49 U.S.C., permits the Secretary of Transportation to use up to one-half percent of the funds made available under the Urbanized Area Formula Program and the Nonurbanized Area Formula Program, and three-quarters percent of funds made available under the Capital Investment Program to contract with any person to oversee the construction of any major project under these statutory programs to conduct safety, procurement, management and financial reviews and audits, and to provide technical assistance to correct deficiencies identified in compliance reviews and audits. Language in the 2002 DOT Appropriations Act increases the amount made available under the Capital Investment Program for oversight activities to one percent.

D. VIII Paralympiad for the Disabled

The FY 2002 DOT Appropriations Act made $5 million available from the formula grants program for the VIII Paralympaid for the Disabled, to be held in Salt Lake City, Utah. The funds shall be available for grants for the costs of planning, delivery and temporary use of transit vehicles for special transportation needs and construction of temporary transportation facilities for the VIII Paralympiad for the Disabled.

III. Fiscal Year 2002 Focus Areas

A. Transit Safety and Security

Public transit agencies throughout the nation have stepped up security efforts following the terrorist events of September 2001. FTA has launched an FY 2002 effort to assist transit providers to address security issues and has refocused funding to specific security-related activities. Initially, FTA will deploy security assessment teams to the largest transit systems in the country. These assessment findings and best practices will enable the FTA to provide extended assistance to all transit agencies to evaluate and update their emergency response plans. FTA will provide technical and funding assistance to transit agencies for full-scale emergency response drills based on their updated response plans and vulnerability assessments. Free regional workshops will offer security and emergency response training to local transit employees.

FTA has identified $2 million of FY 2002 research funding to undertake security-related transit research under the auspices of the Transit Cooperative Research Program of the National Academy of Sciences.

Also, recipients of section 5307 formula funding are reminded that at least one percent of the amount a grantee receives each fiscal year must be expended on ''mass transportation security projects'' unless the grantee certifies, and the Secretary of Transportation accepts, that the expenditure for security projects is unnecessary. It is unlikely that FTA will waive this requirement.

Another potential source of funding for transit security enhancements is through the FHWA transfer of flexible formula funds, as provided in 23 U.S.C. 104, which, in conjunction with Title 23 U.S.C. 120, provides transit agencies a 100 percent Federal share for safety projects (subject to a nationwide 10 percent program limitation).

B. 2000 Census

The Census Bureau identifies and classifies urban and rural population and delineates urbanized areas after each decennial census. The FTA uses urbanized and rural designations and statistical data for a number of purposes, including the apportionment of funds for its formula based programs.

The Census Bureau had not completed the process of delineating urbanized and rural areas for the 2000 Census at the time FTA apportioned FY 2002 funds. Therefore, the 1990 Census data was used for the FY 2002 apportionments contained in this notice.

It is anticipated that a number of areas will change categories under the 2000 Census, as a result of growth in population and/or the application of new criteria that will be used to define/designate urbanized and rural areas. Once FTA receives the 2000 Census data, we will post, on the FTA Website, estimated FY 2003 apportionments for the formula programs.

For further information contact Ken Johnson, FTA Office of Resource Management and State Programs, at (202) 366–2053.

C. TEAM-Web

The Transportation Electronic Award Management system (TEAM) is FTA's electronic grant making and record keeping system. On October 1, 2001, FTA released TEAM-Web, a new Internet version of the TEAM system. TEAM-Web permits grantees to submit their grant information via the Internet and provides for continued and enhanced submission of grant information electronically.

TEAM-Web provides the recipients of financial assistance online access to the FTA information resources that support their mission critical operations,

including real time access to detailed disbursements by project, balances in formula budget accounts, and the status of applications in the award process. The new system also has an email notification process that will ensure accountability when processing applications through the FTA Offices and the Department of Labor. All current user information has been migrated to the Web version of TEAM. FTA has conducted training sessions on how to navigate TEAM-Web in its Headquarters and Regional Offices. For information on future training sessions, contact the appropriate FTA Regional Office.

To access TEAM-Web, log onto the Internet at *http://FTATEAMWeb.fta.dot.gov.* For additional information, contact Glenn Bottoms, Chief, Transit Data and Support Division, (202) 366–1632.

D. New Starts Rule and Workshops

TEA–21 requires the FTA to issue regulations on the manner in which candidate projects for capital investment grants or loans for new fixed guideway systems and extensions to existing systems (New Starts) will be evaluated and rated. The Major Capital Investment Projects Final Rule (49 CFR Part 611), referred to as the New Starts Final Rule, was published in the **Federal Register** on December 7, 2000, and became effective on April 6, 2001.

Electronic access to this Final Rule and related documents is available through the FTA Web site (*http://www.fta.dot.gov*), under the New Starts section. Paper copies of this Final Rule and other documentation can be obtained by contacting FTA at one of our Regional Offices.

As in the previous fiscal year, FTA will conduct outreach sessions and workshops in FY 2002 to introduce the Final Rule and to continue longstanding outreach efforts on the New Starts program. Information on scheduled workshops can be obtained by contacting any FTA Regional Office, as well as the FTA Office of Planning and the FTA Office of Budget and Policy.

E. Intelligent Transportation Systems (ITS)

Section 5206(e) of TEA–21 requires that Intelligent Transportation Systems (ITS) projects using funds from the Highway Trust Fund (including the Mass Transit Account) conform to National ITS Architecture and Standards. The FTA National ITS Architecture Consistency Policy for Transit Projects implements the TEA–21 requirements and went into effect on April 8, 2001. The Policy is available on the FTA Web site, and guidance material is available on the Departmental ITS Web site at *www.its.dot.gov.* These standards and requirements apply to FY 2002 allocations included in this notice that contain ITS components. Using existing FTA oversight procedures, FTA has initiated a program to provide initial oversight and technical assistance with respect to National ITS Architecture Consistency requirements.

Questions regarding the applicability of these standards and requirements should be addressed to the FTA Regional Office or FTA Office of Research, Demonstration and Innovation, at (202) 366–4991.

F. Environmental Streamlining

TEA–21 directs DOT to expedite the environmental review process for proposed highway and transit projects. With this apportionments notice, FTA is introducing two measures concerning proposed major transit investments (New Starts) that will support timely delivery of projects, while maintaining and enhancing protection of the human and natural environment.

First, FTA is extending automatic pre-award authority to proposed New Starts projects for costs incurred to acquire real property and real property rights upon the completion of the National Environmental Policy Act (NEPA) review of the proposed project. NEPA review is complete when FTA signs an environmental Record of Decision (ROD) or Finding of No Significant Impact (FONSI) or makes a Categorical Exclusion (CE) determination. This measure will enable grant applicants to begin earlier to assist persons and businesses that will be displaced by the project in a manner consistent with commitments made as part of the NEPA review and in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA). It will also help grant applicant to initiate the lengthy process of acquiring property earlier.

Second, FTA will extend automatic pre-award authority to proposed New Starts projects for costs incurred to carry out the NEPA review process and to prepare an Environmental Impact Statement (EIS), Environmental Assessment (EA), Categorical Exclusion (CE), or other environmental documents for that project upon the inclusion of that project in a federally approved State Transportation Improvement Program (STIP). FTA had previously given pre-award authority for use of formula funds. Now New Starts funds may serve as a funding source for these New Starts project NEPA activities. This measure will eliminate unnecessary delays in starting up the conceptual engineering, public involvement process, and interagency coordination for the project.

For additional information, contact Joseph Ossi, FTA Office of Planning, (202) 366–1613.

IV. Metropolitan Planning Program and State Planning and Research Program

A. Metropolitan Planning Program

Funding made available for the Metropolitan Planning Program (49 U.S.C. 5303) in the FY 2002 DOT Appropriations Act is $55,422,400, which is the guaranteed funding level under TEA–21. The FY 2002 Metropolitan Planning Program apportionment to States for MPOs' use in urbanized areas totals $55,662,971. This amount includes $55,422,400 in FY 2002 funds, and $240,571 in prior year deobligated funds available for reapportionment under this program. A basic allocation of 80 percent of this amount ($44,530,377) is distributed to the States based on the State's urbanized area population as defined by the U.S. Census Bureau for subsequent State distribution to each urbanized area, or parts thereof, within each State. A supplemental allocation of the remaining 20 percent ($11,132,594) is also provided to the States based on an FTA administrative formula to address planning needs in the larger, more complex urbanized areas. Table 2 contains the final State apportionments for the combined basic and supplemental allocations. Each State, in cooperation with the MPOs, must develop an allocation formula for the combined apportionment, which distributes these funds to MPOs representing urbanized areas, or parts thereof, within the State. This formula, which must be approved by the FTA, must ensure to the maximum extent practicable that no MPO is allocated less than the amount it received by administrative formula under the Metropolitan Planning Program in FY 1991 (minimum MPO allocation). Each State formula must include a provision for the minimum MPO allocation. Where the State and MPOs desire to use a new formula not previously approved by FTA, it must be submitted to the appropriate FTA Regional Office for prior approval.

By April 2002, the Census Bureau is expected to make available detailed results of the 2000 Census and designate new urbanized areas. When the Census Bureau issues its population data, FTA will request that States reaffirm these in-State formulas. A reaffirmation or new

in-State formula should be submitted to the FTA Regional Office in time to receive approval before October 1, 2002. Currently, guaranteed and authorized funding levels for each State over the life of TEA–21 (fiscal years 1999–2003) based on the 1990 Census, are posted at *http://www.fta.dot.gov/office/planning/gaf.htm.* FTA will post revised fiscal year 2003 guaranteed and authorized funding levels based on the 2000 Census for each State at this same Web site address, when 2000 Census data becomes available. This information should be utilized by each State when reaffirming or revising in-State formulas.

B. State Planning and Research Program

Funding made available for the State Planning and Research Program (49 U.S.C. 5313(b)) in the FY 2002 DOT Appropriations Act is $11,577,600, the guaranteed funding level under TEA–21.

The FY 2002 apportionment for the State Planning and Research Program (SPRP) totals $11,698,648. This amount includes $11,577,600 in FY 2002 funds, and $121,048 in prior year deobligated funds, which have become available for reapportionment under this program. Final State apportionments for this program are also contained in Table 2. These funds may be used for a variety of purposes such as planning, technical studies and assistance, demonstrations, management training, and cooperative research. In addition, a State may authorize a portion of these funds to be used to supplement metropolitan planning funds allocated by the State to its urbanized areas, as the State deems appropriate.

C. Data Used for Metropolitan Planning and State Planning and Research Apportionments

Population data from the 1990 Census is used in calculating these apportionments. The Metropolitan Planning funding provided to urbanized areas in each State by administrative formula in FY 1991 was used as a ''hold harmless'' base in calculating funding to each State.

D. FHWA Metropolitan Planning Program

For informational purposes, the estimated FY 2002 apportionments for the FHWA Metropolitan Planning Program (PL) are contained in Table 3. Estimated apportionments for the FY 2002 FHWA State Planning and Research Program (SPRP) were not available at the time of publication of this notice.

E. Local Match Waiver for Specified Planning Activities

Job Access and Reverse Commute Planning. Federal, State and local welfare reform initiatives may require the development of new and innovative public and other transportation services to ensure that former welfare recipients have adequate mobility for reaching employment opportunities. In recognition of the key role that transportation plays in ensuring the success of welfare-to-work initiatives, FTA and FHWA permit the waiver of the local match requirement for job access and reverse commute planning activities undertaken with both FTA and FHWA Metropolitan Planning Program and State Planning and Research Program funds. FTA and FHWA will support requests for waivers when they are included in Metropolitan Unified Planning Work Programs and State Planning and Research Programs and meet all other appropriate requirements.

F. Planning Emphasis Areas for Fiscal Year 2002

The FTA and FHWA identify Planning Emphasis Areas (PEAs) annually to promote priority themes for consideration, as appropriate, in metropolitan and statewide transportation planning processes. To support this, FTA and FHWA will prepare an inventory of current practice, guidance and training in those areas. Opportunities for exchanging ideas and experiences on innovative practices in these topic areas also will be provided throughout the year. For FY 2002, five key planning themes have been identified: (1) Consideration of safety and security in the transportation planning process; (2) integration of planning and environmental processes; (3) consideration of management and operations within planning processes; (4) consultation with local officials; and (5) enhancing the technical capacity of planning processes.

1. Safety and Security in the Transportation Planning Process

TEA–21 emphasizes the safety and security of transportation systems as a national priority and calls for transportation projects and strategies that ''increase the safety and security of transportation systems.'' This entails integration of safety and facility security into all stages of the transportation planning process.

FTA and FHWA are working together to advance the state-of-practice in addressing safety and security in the metropolitan and statewide planning process through workshops and case studies. A report prepared by the Transportation Research Board (TRB), Transportation Research Circular E–C02, ''Safety-Conscious Planning,'' January 2001, describes the issues and recommendations identified at a Safety in Planning workshop held earlier. The report is available on the TRB Web site at www.nas.edu/trb. Also, the Institute of Transportation Engineers (ITE) has prepared a discussion paper on the topic, entitled ''The Development of the Safer Network Transportation Planning Process,'' which is posted to their Web site at [*www.ite.org.*]

2. Integrated Planning and Environmental Processes

TEA–21 mandates the elimination of the Major Investment Study as a stand-alone requirement, while integrating the concept within the planning and project development/environmental review processes. A training course entitled ''Linking Planning and NEPA'' is being developed and will be made available at the National Transit Institute Web site—[*www.ntionline.com*].

3. Consideration of Management and Operations Within Planning Processes

TEA–21 challenges FHWA and FTA to move beyond traditional capital programs for improving the movement of people and goods—focusing on the need to improve the way transportation systems are managed and operated. FTA and FHWA have convened a working group and have commissioned discussion papers on the topic. This information is available at *http://plan2op.fhwa.dot.gov.*

4. Consultation With Local Officials

Consultation with local officials is a vital yet sensitive issue within the transportation planning process. Within metropolitan areas, the MPO provides the venue and policy context for this. Outside of metropolitan areas, FHWA and FTA are working to facilitate the most effective consultation processes within each State. FTA and FHWA will continue to ensure effective consultation between States and local officials in non-metropolitan areas in reviewing statewide planning and, specifically, in making findings in support of FTA and FHWA STIP approvals.

5. Enhancing the Technical Capacity of Planning Processes

Reliable information on current and projected usage and performance of transportation systems is critical to the ability of planning processes to supply credible information to decision-makers

to support preparation of plans and programs that respond to their localities' unique needs and policy issues. To ensure the reliability of usage and performance data, as well as the responsiveness of policy forecasting tools, an evaluation is needed of the quality of information provided by the technical tools, data sources, forecasting models, as well as the expertise of staff to ensure its adequacy to support decision-making. And if this support is found to be lacking, the responsible agencies within metropolitan and statewide planning processes are encouraged to devote appropriate resources to enhancing and maintaining their technical capacity.

The metropolitan and statewide transportation planning processes have become critical tools for responding to increasingly complex issues at the State and local levels. Many of these issues are encompassed in previously listed planning emphasis areas (e.g., integrated planning and environmental processes, management and operations, analytical tools and methods) and include much more. It is essential that FTA and FHWA provide technical assistance, training, and information to our customers to further enhance the skills and capabilities they utilize to conduct effective transportation planning processes. The FTA and FHWA have created the Metropolitan Capacity Building (MCB) Program, and the Statewide and Rural Capacity Building Programs as tools to disseminate and coordinate information, training, and foster a dialogue for the exchange of ideas. More information on the MCB program can be found at *www.mcb.fhwa.dot.gov.*

For further information on these PEAs, contact Ken Lord, FTA Metropolitan Planning Division, (202) 366–2836, or Shana Baker, FHWA Office of Metropolitan Planning and Programs, (202) 366–1862.

G. Federal Planning Certification Reviews

The Intermodal Surface Transportation Efficiency Act (ISTEA) initiated, and TEA–21 continued, the requirement for the FTA and FHWA to certify, at least every three years, that the planning processes conducted in the largest metropolitan areas were being carried out in compliance with applicable provisions of Federal law. This provision applies specifically to localities termed ''Transportation Management Areas'' (TMA), which are urbanized areas with populations of 200,000 and above, or other urbanized areas that may be designated by the Secretary of Transportation. TEA–21 further required that, in conducting these certification reviews, provisions be made for public involvement appropriate to the metropolitan area under review.

To that end, an annual calendar of prospective dates and locations for certification reviews of TMAs anticipated in FY 2002 has been prepared and is posted on the FTA Web site at *http://www.fta.dot.gov/library/planning/cert2002.htm.*

For further information regarding Federal certifications of the planning process, contact: for FTA, Charles Goodman, FTA Metropolitan Planning Division, (202) 366–1944, or Scott Biehl, FTA Office of Chief Counsel, (202) 366–4063; for FHWA, Sheldon Edner, FHWA Metropolitan Planning Division, (202) 366–4066, or Reid Alsop, FHWA Office of the Chief Counsel, (202) 366–1371.

H. Consolidated Planning Grants

Since FY 1997, FTA and FHWA have offered States the option of participating in a pilot Consolidated Planning Grant (CPG) program. Additional State participants are sought so that FTA and FHWA can benefit from the widest possible range of participant input to improve and further streamline the process.

With the fund transfer provisions of TEA–21, which were applied to the CPG beginning in FY 2000, all funds (more than 35 post-FY 1999 FHWA sources are eligible for transfer) can be accessed by indicating only whether the funds are for State or metropolitan planning. This streamlined fund drawdown process eliminates the need to monitor individual fund sources, if several have been used, and ensures that the oldest funds will always be used first.

Under the CPG, States can report metropolitan planning expenditures (to comply with the Single Audit Act) for both FTA and FHWA under the Catalogue of Federal Domestic Assistance number for FTA's Metropolitan Planning Program. Additionally, for States with an FHWA Metropolitan Planning (PL) fund-matching ratio greater than 80 percent, the State (through FTA) can request a waiver of the 20 percent local share requirement in order that all FTA funds used for metropolitan planning in a CPG can be granted at the higher FHWA rate. For some States, this Federal match rate can exceed 90 percent. Currently, three western States participating in the pilot (California, Idaho, and Wyoming) are using the FHWA PL match rate for FTA's Metropolitan Planning Program.

Pre-award authority has been granted to FTA's planning programs for the life of TEA–21. This pre-award authority enables States to continue planning program activities from year to year with the assurance that eligible costs can later be converted to a regularly funded Federal project without the need for prior approval or authorization from the granting agency. Beginning in FY 2000, the transfer procedures established to implement the transfer provision in TEA–21 (section 1103(i) ''Transfer of Highway and Transit Funds'') is applicable to FHWA funds used in CPG. For planning projects funded through CPG, the State DOT requests the transfer of funds in a letter to the FHWA Division Office. The FHWA-funded planning activities must be in accordance with the State's or MPO's Planning Work Program. The letter must be signed by the appropriate State official or their designee and must specify the State and the amount of funding to be transferred for the CPG by apportionment category (e.g. STP, CMAQ, Donor State Bonus, Funding Restoration, etc.) and by appropriation year. The letter should include only the funding for planning activities contained in the State's or MPO's Planning Work Program. If no FTA program, either Metropolitan Planning (49 U.S.C. 5303) or Statewide Planning and Research (49 U.S.C. 5313(b)), is indicated for transfers to CPG, funds will be credited to the Metropolitan Planning Program.

As part of the pilot, FTA will continue to work with participating States to increase the flexibility and further streamline the consolidated approach to planning grants. For further information on participating in the CPG Pilot, contact Candace Noonan, Intermodal and Statewide Planning Division, FTA, at (202) 366–1648 or Anthony Solury, Office of Planning and Environment, FHWA, at (202) 366–5003.

I. New Starts Approval to Enter Preliminary Engineering and Final Design

TEA–21 extends FTA's long-standing authority for approving the advancement of candidate New Starts projects into preliminary engineering (PE) by requiring that FTA also approve entrance into the final design (FD) stage of project development. Specifically, 49 U.S.C. 5309(e)(6) requires that a proposed New Starts project may advance into preliminary engineering or final design only if FTA finds that the project meets the statutory criteria specified in § 5309(e), and that there is a reasonable likelihood that it will continue to do so. In making such findings, FTA evaluates and rates proposed New Starts projects as ''highly

recommended,'' ''recommended,'' or ''not recommended,'' based on the results of alternatives analysis, the statutory criteria for project justification, and the degree of local financial commitment. FTA has established a set of decision rules for approving entrance into preliminary engineering and final design at 49 CFR part 611. After first meeting several basic planning, environmental, and project management requirements which demonstrate the ''readiness'' of the project to advance into the next stage of project development, candidate projects are subject to FTA evaluation against the New Starts project justification and local financial commitment criteria. Projects may advance to the next appropriate stage of project development (PE or FD) only if rated ''recommended'' or ''highly recommended,'' based on FTA's evaluation under the statutory criteria. Projects rated ''not recommended'' will not be approved to advance.

Section 5309(e)(8)(A) of Title 49 U.S.C. exempts projects which request a section 5309 New Starts share of less than $25 million from the requirements of section 5309(e). TEA–21 also provides statutory exemptions to certain specific projects. It is important to note that any exemption under section 5309(e)(8)(A) applies only to the statutory New Starts project evaluation criteria that serves as the basis for FTA's approval to advance to preliminary engineering and final design for such projects. Proposed New Starts projects seeking less than $25 million in funding from the § 5309 New Starts program must still request approval to enter the next stage of development, and must fulfill all appropriate planning, environmental, and project management requirements. Nonetheless, FTA encourages sponsors of projects they believe to be exempt to submit the full range of data to FTA for evaluation and rating. This will provide FTA with the means necessary to make funding recommendations for such projects to Congress, and will protect project sponsors in the event that further project development activities reveal the need for additional § 5309 New Starts funding beyond $25 million.

V. Urbanized Area Formula Program

A. Total Urbanized Area Formula Apportionments

The amount made available to the Urbanized Area Formula Program (49 U.S.C. 5307) in the FY 2002 DOT Appropriations Act is $3,216,040,006. In addition, $7,092,285 in deobligated funds became available for reapportionment under the Urbanized Area Formula Program as provided by 49 U.S.C. 5336(i).

After reserving $16,080,200 for oversight, the amount of FY 2002 funds available for apportionment is $3,199,959,806. The funds to be reapportioned, described in the previous paragraph, are then added and increase the total amount apportioned for this program to $3,207,052,091. Table 4 displays the amounts apportioned under the Urbanized Area Formula Program. Table 13 contains the apportionment formula for the Urbanized Area Formula Program.

An additional $4,849,950 is made available for the Alaska Railroad for improvements to its passenger operations. After reserving $24,250 for oversight, $4,825,700 is available for the Alaska Railroad.

B. Fiscal Year 2001 Apportionment Adjustments

Adjustments were made to the apportionment of two urbanized areas because of corrections to data used to compute the FY 2001 Urbanized Area Formula Program apportionments, published in the **Federal Register** of January 18, 2001 (66 FR 4918). The differences between the previously published apportionment and the corrected apportionment for these areas have been resolved and the necessary adjustment made to the areas' apportionment for FY 2002. The amounts published in this notice contain the adjustments and the affected urbanized areas have been advised.

C. Data Used for Urbanized Area Formula Apportionments

Data from the 2000 National Transit Database (NTD) Report Year (49 U.S.C. 5335) submitted in late 2000 and early 2001 were used to calculate the FY 2002 Urbanized Area Formula apportionments for urbanized areas 200,000 in population and over. Population and population density data are also used in calculating apportionments under the Urbanized Area Formula Program.

D. Urbanized Area Formula Apportionments to Governors

The total Urbanized Area Formula apportionment to the Governor for use in areas under 200,000 in population for each State is shown in Table 4. This table also contains the total apportionment amount attributable to each urbanized area within the State. The Governor may determine the allocation of funds among the urbanized areas under 200,000 in population with one exception. As further discussed in Section G below, funds attributed to an urbanized area under 200,000 in population, located within the planning boundaries of a transportation management area, must be obligated in that area.

E. Transit Enhancements

One percent of the Urbanized Area Formula Program apportionment in each urbanized area with a population of 200,000 and over must be made available only for transit enhancements. Table 4 shows the amount set aside for enhancements in these areas.

The term ''transit enhancement'' includes projects or project elements that are designed to enhance mass transportation service or use and are physically or functionally related to transit facilities. Eligible enhancements include the following: (1) Historic preservation, rehabilitation, and operation of historic mass transportation buildings, structures, and facilities (including historic bus and railroad facilities); (2) bus shelters; (3) landscaping and other scenic beautification, including tables, benches, trash receptacles, and street lights; (4) public art; (5) pedestrian access and walkways; (6) bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on mass transportation vehicles; (7) transit connections to parks within the recipient's transit service area; (8) signage; and (9) enhanced access for persons with disabilities to mass transportation.

It is the responsibility of the MPO to determine how the one percent will be allotted to transit projects. The one percent minimum requirement does not preclude more than one percent being expended in an urbanized area for transit enhancements. Items that are only eligible as enhancements—in particular, operating costs for historic facilities—may be assisted only within the one percent funding level.

The recipient must submit a report to the appropriate FTA Regional Office listing the projects or elements of projects carried out with those funds during the previous fiscal year and the amount awarded. The report must be submitted with the Federal fiscal year's final quarterly progress report in TEAM-Web. The report should include the following elements: (a) Grantee name, (b) urbanized area name and number, (c) FTA project number, (d) transit enhancement category, (e) brief description of enhancement and progress towards project implementation, (f) activity line item code from the approved budget, and (g)

amount awarded by FTA for the enhancement.

F. Fiscal Year 2002 Operating Assistance

FY 2002 funding for operating assistance is available only to urbanized areas with populations under 200,000. For these areas, there is no limitation on the amount of the State apportionment that may be used for operating assistance, and the Federal/local share ratio is 50/50.

TEA–21 provides two exceptions to the restriction on operating assistance in areas over 200,000 in population. These exceptions have been addressed and eligible areas previously notified.

G. Designated Transportation Management Areas

All urbanized areas over 200,000 in population have been designated as Transportation Management Areas (TMAs), in accordance with 49 U.S.C. 5305. These designations were formally made in a **Federal Register** Notice dated May 18, 1992 (57 FR 21160). Additional areas have been designated as TMAs upon the request of the Governor and the MPO designated for such area or the affected local officials. During FY 2001, no additions to existing TMAs were designated.

Guidance for setting the boundaries of TMAs is contained in the joint transportation planning regulations codified at 23 CFR part 450 and 49 CFR part 613. In some cases, the TMA boundaries, which have been established by the MPO for the designated TMA, also include one or more urbanized areas with less than 200,000 in population. Where this situation exists, the discretion of the Governor to allocate Urbanized Area Formula program ''Governor's Apportionment'' funds for urbanized areas with less than 200,000 in population is restricted, i.e., the Governor only has discretion to allocate Governor's Apportionment funds attributable to areas that are outside of designated TMA boundaries.

If any additional small urbanized areas—within the boundaries of a TMA—are identified, notification should be made in writing to the Associate Administrator for Program Management, Federal Transit Administration, 400 Seventh Street, SW., Washington, DC 20590, no later than July 1 of each fiscal year. FTA's most recent list of urbanized areas with population less than 200,000 that are included within the planning boundaries of designated TMAs, is contained in the ''FTA Fiscal Year 2001 Apportionment, Allocations and Program Information; Notice'' which, can be found on the FTA Web site.

H. Urbanized Area Formula Funds Used for Highway Purposes

Urbanized Area Formula funds apportioned to a TMA can be transferred to FHWA and made available for highway projects if the following three conditions are met: (1) Such use must be approved by the MPO in writing after appropriate notice and opportunity for comment and appeal are provided to affected transit providers; (2) in the determination of the Secretary, such funds are not needed for investments required by the Americans with Disabilities Act of 1990 (ADA); and (3) the MPO determines that local transit needs are being addressed.

Urbanized Area Formula funds that are designated for highway projects will be transferred to and administered by FHWA. The MPO should notify FTA of its intent to use FTA funds for highway purposes, as prescribed in section VIII.A., below.

I. National Transit Database (NTD) Internet Reporting and Redesign Effort

The NTD is the FTA database for nation-wide statistics on the transit industry, including safety data. Prior to FY 2001, FTA reporters utilized diskettes to submit statistics on their operating, financial and safety activities to FTA. Last year, reporters had the option of using the diskette system or the FTA new Internet reporting system. Beginning with FY 2002, all reports will need to be submitted via the Internet. Diskettes will no longer be accepted. The FTA NTD reporting seminars, held six times annually across the country, have concentrated on the Internet reporting system. The changeover to Internet reporting has received favorable comments and has resulted in accelerated data collection and validation.

NTD statistics are utilized, in part, to apportion Urbanized Area Formula Program funds for areas over 200,000 in population. In addition, NTD data is summarized and used to report to Congress on the performance of the transit industry and associated costs. These data are used to assist in assessing whether annual FTA Strategic Plan goals are achieved.

The overall effort to modernize and redesign the NTD—as detailed in the FTA May 31, 2001 report to Congress entitled ''Review of the National Transit Database''—continues and is now in the programming phase. Plans call for reporting via the new NTD in the Fall of 2002 with training for NTD reporters to begin in the winter of 2001. The monthly/quarterly reporting of summary safety, security, and extent of service data, as well as immediate reporting of major safety and security incidents, will be implemented in calendar year 2002. This reporting has been structured to exempt smaller transit properties (under 100 vehicles in maximum service) from the monthly reporting requirement. An increased number of NTD seminars are scheduled to assist transit properties in reporting. See the NTD Web site for further information at *www.ntdprogram.com*.

VI. Nonurbanized Area Formula Program and Rural Transit Assistance Program (RTAP)

A. Nonurbanized Area Formula Program

The amount made available for the Nonurbanized Area Formula Program (49 U.S.C. 5311) in the FY 2002 DOT Appropriations Act is $224,555,243. The FY 2002 Nonurbanized Area Formula apportionments to the States total $226,410,089 and are displayed in Table 5. Of the $224,555,243 available, $1,122,776 was reserved for oversight. The funds apportioned include $2,977,622 in deobligated funds from fiscal years prior to FY 2002.

The Nonurbanized Area Formula Program provides capital, operating and administrative assistance for areas under 50,000 in population. Each State must spend no less than 15 percent of its FY 2002 Nonurbanized Area Formula apportionment for the development and support of intercity bus transportation, unless the Governor certifies to the Secretary that the intercity bus service needs of the State are being adequately met.

B. Rural Transit Assistance Program (RTAP)

Funding made available for the RTAP (49 U.S.C. 5311(b)(2)) in the 2002 DOT Appropriations Act was $5,250,000, the guaranteed funding level under TEA–21. The FY 2002 RTAP allocations to the States total $5,270,729 and are also displayed in Table 5. This amount includes $5,250,000 in FY 2002 funds, and $20,729 in prior year deobligated funds, which are available for reapportionment.

The funds are allocated to the States to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas. These funds are to be used in conjunction with the States' administration of the Nonurbanized Area Formula Program.

FTA also supports RTAP activities at the national level within the National

Planning and Research Program (NPRP). The National RTAP projects support the States in their use of the formula allocations for training and technical assistance. Congress did not designate any funds for the National RTAP among the NPRP allocations in the Conference Report accompanying the FY 2002 DOT Appropriations Act. FTA will, however, include the National RTAP among priority projects to be funded from available NPRP funds. During FY 2002, FTA will conduct a competitive selection to choose providers of the National RTAP services for the next five years.

VII. Elderly and Persons with Disabilities Program

Funds in the amount of $84,604,801 are made available for the Elderly and Persons with Disabilities Program (49 U.S.C. 5310) in the FY 2002 DOT Appropriations Act. A total of $84,930,249 is apportioned to the States for FY 2002 for the Elderly and Persons with Disabilities Program. In addition to the FY 2002 funding of $84,604,801, the FY 2002 apportionment includes $325,448 in prior year unobligated funds, which are available for reapportionment under the Elderly and Persons with Disabilities Program. Table 6 shows each State's apportionment.

The formula for apportioning these funds uses Census population data for persons aged 65 and over and for persons with disabilities. The funds provide capital assistance for transportation for elderly persons and persons with disabilities. Eligible capital expenses may include, at the option of the recipient, the acquisition of transportation services by a contract, lease, or other arrangement.

While the assistance is intended primarily for private non-profit organizations, public bodies that coordinate services for the elderly and persons with disabilities, or any public body that certifies to the State that there are no non-profit organizations in the area that are readily available to carry out the service, may receive these funds.

These funds may be transferred by the Governor to supplement Urbanized Area Formula or Nonurbanized Area Formula capital funds during the last 90 days of the fiscal year.

VIII. FHWA Surface Transportation Program and Congestion Mitigation and Air Quality Funds Used for Transit Purposes (Title 23, U.S.C. 104)

A. Transfer Process

The process for transferring flexible formula funds between FTA and FHWA programs is described below. Information on the transfer of FHWA funds to FTA planning programs can be found in section IV.H., above.

Transfer From FHWA to FTA

FHWA funds designated for use in transit capital projects must result from the metropolitan and statewide planning and programming process, and must be included in an approved Statewide Transportation Improvement Program (STIP) before the funds can be transferred. The State DOT requests, by letter, the transfer of highway funds for a transit project to the FHWA Division Office. The letter should specify the project, amount to be transferred, apportionment year, State, Federal aid apportionment category (i.e., Surface Transportation Program (STP), Congestion Mitigation and Air Quality (CMAQ), Interstate Substitute, or congressional earmark), and a description of the project as contained in the STIP.

The FHWA Division Office confirms that the apportionment amount is available for transfer and concurs in the transfer by letter to the State DOT and FTA. The FHWA Office of Budget and Finance then transfers obligation authority and an equal amount of cash to FTA. All CMAQ, STP, and FHWA funds allocated to transit projects in the Appropriations Act or Conference Report will be transferred to one of the three FTA formula capital programs (i.e. Urbanized Area Formula (section 5307), Nonurbanized Area Formula (section 5311) or Elderly and Persons with Disabilities (section 5310).

The FTA grantee's application for the project must specify which capital program the funds will be used for and the application should be prepared in accordance with the requirements and procedures governing that program. Upon review and approval of the grantee's application, FTA obligates funds for the project.

The transferred funds are treated as FTA formula funds, but are assigned a distinct identifying code for tracking purposes. The funds may be used for any purpose eligible under the FTA formula capital program to which they are transferred. FTA and FHWA have issued guidance on project eligibility under the CMAQ program in a **Federal Register** notice dated February 23, 2000 (65 FR 9040). All FTA requirements are applicable to transferred funds except local share—FHWA local share requirements apply. Transferred funds should be combined with regular FTA funds in a single annual grant application.

Transfers From FTA to FHWA

The Metropolitan Planning Organization (MPO) submits a request to the FTA Regional Office for a transfer of FTA section 5307 formula funds (apportioned to an urbanized area 200,000 and over in population) to FHWA based on approved use of the funds for highway purposes, as contained in the Governor's approved State Transportation Improvement Program. The MPO must certify that: (1) The funds are not needed for capital investments required by the Americans with Disabilities Act; (2) notice and opportunity for comment and appeal has been provided to affected transit providers; and (3) local funds used for non-Federal match are eligible to provide assistance for either highway or transit projects. The FTA Regional Administrator reviews and concurs in the request, then forwards the approval to FTA Headquarters, where a reduction is made to the grantee's formula apportionment and FTA's National Operating Budget in TEAM-Web, equal to the dollar amount being transferred to FHWA.

For information regarding these procedures, please contact Kristen D. Clarke, FTA Budget Division, at (202) 366–1699; or Richard Meehleib, FHWA Finance Division, at (202) 366–2869.

B. Matching Share for FHWA Transfers

The provisions of Title 23 U.S.C., regarding the non-Federal share apply to Title 23 funds used for transit projects. Thus, FHWA funds transferred to FTA retain the same matching share that the funds would have if used for highway purposes and administered by FHWA.

There are three instances in which a Federal share higher than 80 percent would be permitted. First, in States with large areas of Indian and certain public domain lands and national forests, parks and monuments, the local share for highway projects is determined by a sliding scale rate, calculated based on the percentage of public lands within that State. This sliding scale, which permits a greater Federal share, but not to exceed 95 percent, is applicable to transfers used to fund transit projects in these public land States. FHWA develops the sliding scale matching ratios for the increased Federal share.

Secondly, commuter carpooling and vanpooling projects and transit safety projects using FHWA transfers administered by FTA may retain the same 100 percent Federal share that would be allowed for ride-sharing or safety projects administered by the FHWA.

The third instance includes the 100 percent Federal safety projects;

however, these are subject to a nationwide 10 percent program limitation.

IX. Capital Investment Program (49 U.S.C. 5309)

A. Fixed Guideway Modernization

The formula for allocating the Fixed Guideway Modernization funds contains seven tiers. The apportionment of funding under the first four tiers, through FY 2003, is based on data used to apportion the funding in FY 1997. Funding under the last three tiers is apportioned based on the latest available route miles and revenue vehicle miles on segments at least seven years old, as reported to the NTD.

Table 7 displays the FY 2002 Fixed Guideway Modernization apportionments. Fixed Guideway Modernization funds apportioned for this section must be used for capital projects to maintain, modernize, or improve fixed guideway systems.

All urbanized areas with fixed guideway systems that are at least seven years old are eligible to receive Fixed Guideway Modernization funds. A request for the start-up service dates for fixed guideways has been incorporated into the NTD reporting system to ensure that all eligible fixed guideway data is included in the calculation of the apportionments. A threshold level of more than one mile of fixed guideway is required to receive Fixed Guideway Modernization funds. Therefore, urbanized areas reporting one mile or less of fixed guideway mileage under the NTD are not included.

For FY 2002, $1,136,400,000 is made available for Fixed Guideway Modernization in the FY 2002 DOT Appropriations Act, which is the guaranteed funding level in TEA–21. An amount of $11,364,000 was then deducted for oversight, and $7,047,502 was set aside for the Alaska Railroad as directed by language in Section 1124 of the FY 2001 Omnibus Consolidated Appropriations Act (Pub. L. 106–554), leaving $1,117,988,498 available for apportionment to eligible urbanized areas. In addition to the FY 2002 funding, $547,205 in deobligated funds from fiscal years prior to FY 2002 is added and increases the total amount apportioned to $1,118,535,703 under Fixed Guideway Modernization. Table 14 contains information regarding the Fixed Guideway Modernization apportionment formula.

The Alaska Railroad has been determined to be eligible for funding under the Fixed Guideway Modernization program for service provided in the Anchorage, AK, urbanized area. The FY 2002 Fixed Guideway Modernization apportionment for the Alaska Railroad is, in part, based on a calculated amount derived from application of the Fixed Guideway Modernization formula—using approved Alaska Railroad data for fixed guideway directional route miles located within the Anchorage, AK, urbanized area. In addition, the Alaska Railroad apportionment includes the $7,047,502 set aside for the Alaska Railroad as directed in Public Law 106–554.

The Alaska Railroad eligibility to receive funds under the Fixed Guideway Modernization program is pursuant to FTA's determination that: (1) it is the fixed guideway system for the Anchorage, AK urbanized area (which is an urbanized area eligible for assistance under section 5336(b)(2)(A) of 49 U.S.C. Chapter 53, and therefore eligible for funding under sections 5337(a)(5)(B), 5337(a)(6)(B), and 5337(a)(7)(B)); and (2) the Alaska Railroad meets the standard of having been in service for at least seven years.

The Alaska Railroad was built by the Federal Government between 1914 and 1923. The Railroad operated under the control of the Interior Department until April 1967 when the Department of Transportation assumed that responsibility. After passage of special Federal legislation, the assets of the Alaska Railroad were sold to the State of Alaska, which assumed ownership of the railroad in January 1985. Since Federal ownership of the Alaska Railroad has extended over the greater part of its existence, the DOT acknowledges a special stewardship towards the Alaska Railroad within the Anchorage urbanized area. For purposes of formula apportionments beginning in FY 2004 and beyond, FTA will create a mode code exclusively for reporting to the NTD by the Alaska Railroad in the NTD Reporting Manual for report year 2002.

B. New Starts

The amount made available for New Starts in the FY 2002 DOT Appropriations Act is $1,136,400,000, which was fully allocated and represents the guaranteed funding level under TEA–21. Of this amount, $11,364,000 is reserved for oversight activities, leaving $1,125,036,000 available for allocations to projects. Prior year unobligated funds specified by Congress to be reallocated in the amount of $1,488,840 are then added and increase the total amount allocated to $1,126,524,840. The reallocated funds are derived from unobligated and deobligated balances for the following projects: Hartford-Old Saybrook, CT, project, $496,280; New London-Waterfront, CT, access project, $496,280; and North Front Range, CO, corridor feasibility study, $496,280. The final allocation for each New Starts project is listed in Table 8.

Prior year unobligated allocations for New Starts in the amount of $543,136,665 remain available for obligation in FY 2002. This amount includes $531,342,762 in fiscal years 2000 and 2001 unobligated allocations, and $11,793,903 for fiscal years 1998 and 1999 unobligated allocations that are extended in the FY 2002 Conference Report. These unobligated amounts are displayed in Table 8A.

Capital Investment Program funds for New Starts projects identified as having been extended in the FY 2002 Conference Report accompanying the FY 2002 DOT Appropriations Act, will lapse September 30, 2002. A list of the extended projects and the amount that remains unobligated as of September 30, 2001, is appended to Table 8A for ready reference.

C. Bus

The FY 2002 DOT Appropriations Act provides $568,200,000, for the purchase of buses, bus-related equipment and paratransit vehicles, and for the construction of bus-related facilities. This amount represents the guaranteed funding level under TEA–21.

TEA–21 established a $100 million Clean Fuels Formula Program under 49 U.S.C. 5308 (described in section XII below). The program is authorized to be funded with $50 million from the Bus category of the Capital Investment Program and $50 million from the Formula Program. However, the FY 2002 DOT Appropriations Act directs FTA to transfer the formula portion to, and merge it with, funding provided for the Bus category of the Capital Investment Program. Thus, $618,200,000 appropriated in FY 2002 is available for funding the Bus category of the Capital Investment Program. In addition, Congress directed that funds made available for bus and bus facilities be supplemented with $1,733,658 from projects included in previous Appropriations Acts, which increases the total amount made available to $619,933,658. The supplemental funds are derived from unobligated balances for the following projects: Carroll County, NH transportation alliance buses, $198,500; New Hampshire statewide buses, $34,001; Gary, IN transit consortium buses, $310,157; Jefferson Parish, LA bus and bus facilities, $347,375; Louisiana state infrastructure bank, bus and bus

facilities, $347,375; and North Slope borough, AK, $496,250.

After deducting $6,182,000 for oversight, the amount available for allocation under the Bus category is $613,751,658. Table 9 displays the allocation of the FY 2002 Bus funds by State and project. The FY 2002 Conference Report accompanying the FY 2002 DOT Appropriations Act allocated all of the FY 2002 Bus funds to specified States or localities for bus and bus-related projects. FTA will honor those allocations to the extent that they comply with the statutory authorization for that program.

Prior year unobligated balances for Bus Program allocations in the amount of $494,182,292 remain available for obligation in FY 2002. This includes $477,559,360 in fiscal years 2000 and 2001 unobligated allocations, and $16,622,932 for fiscal years 1998 and 1999 unobligated allocations that are extended in the FY 2002 Conference Report or the FY 2001 Supplemental Appropriations Act Conference Report. These unobligated amounts are displayed in Table 9A.

Capital Investment Program funds for Bus projects identified as having been extended in the Conference Report accompanying the FY 2002 DOT Appropriations Act or the FY 2001 Supplemental Appropriations Act, will lapse September 30, 2002. A list of the extended projects and the amount that remains unobligated as of September 30, 2001, is appended to Table 9A for ready reference.

In addition, the FY 2002 Conference Report provides clarification for FY 2001 projects and permits the use of FY 2001 appropriations for additional work as follows:

(1) Funds appropriated for the Lowell, Massachusetts transit hub can be used for the Hale Street bus maintenance and operations center;

(2) Funds appropriated for the Municipal Transit Operators in California can be used for bus and bus facilities;

(3) Funds appropriated for the King County Metro Eastgate park and ride can be used for the Issaquah Highlands park and ride;

(4) Funds allocated for buses for Suburban Mobility Authority for Regional Transportation (SMART) in Southeast Michigan may also be available for bus facilities; and

(5) Funds appropriated to the Burlington, Vermont multi-modal transit project in fiscal years 1998, 1999, 2000, and 2001 will be available for construction of the multimodal project and other transit improvements.

X. Job Access and Reverse Commute Program

The FY 2002 DOT Appropriations Act provides $125 million for the Job Access and Reverse Commute (JARC) Program, which is the guaranteed funding level under TEA–21. In the FY 2002 Conference Report the appropriators indicated their desire that $109,339,000 of this amount be awarded to certain specified States and localities. These areas and the corresponding amounts are listed in Table 10. States and localities listed in the FY 2002 Conference Report, along with other States and localities not so listed, are invited to apply for JARC funding according to the procedures that will be published in a separate **Federal Register** notice. That notice will solicit applications for the $125 million available in FY 2002 and the $150 million that is the guaranteed level of funding for FY 2003.

Because recipients of JARC funds have expressed the need for multi-year funding through the early stages of implementation, FTA will no longer limit awards to a single year, but rather will consider multi-year funding in appropriate cases. To give effect to this new policy, FTA will give priority to funding continuation of previously selected projects. FTA will solicit applications for continued funding from those applicants previously funded under the JARC program. Grantees may apply for up to two additional years of continuation funding beyond that previously approved. Continuation does not include expansion of services beyond those previously funded. Expanded services will be treated as new projects. Continuation projects are expected to document their progress through their most recent progress report. Evaluation of JARC projects' progress will be a key element in determining continued FTA financial support.

FTA will solicit applications for new JARC projects both from existing recipients and from States, localities and nonprofit organizations that have not previously been awarded JARC funds. Because FY 2003 is the last year of the TEA–21 authorization of the JARC program, applicants for new projects will be encouraged to apply for a level of funding that would allow them to sustain service for at least two years.

Applicants identified in the FY 2002 Conference Report must participate in this application process along with all other applicants. FTA will evaluate and rank all projects submitted in response to this new solicitation. Because it is expected that FY 2002 funds will be used primarily, if not entirely, for continuation projects, it is expected that new projects will not be funded until FY 2003 funds become available.

The JARC program, established under TEA–21, provides funding for the provision of transportation services designed to increase access to jobs and employment-related activities. Job Access projects are those that transport welfare recipients and low-income individuals, including economically disadvantaged persons with disabilities, in urban, suburban, or rural areas to and from jobs and activities related to their employment. Reverse Commute projects provide transportation services for the general public from urban, suburban, and rural areas to suburban employment opportunities. A total of up to $10,000,000 from the appropriation can be used for Reverse Commute Projects.

One of the goals of the JARC program is to increase collaboration among transportation providers, human service agencies, employers, metropolitan planning organizations, States, and affected communities and individuals. All projects funded under this program must be derived from an area-wide Job Access and Reverse Commute Transportation Plan, developed through a regional approach which supports the implementation of a variety of transportation services designed to connect welfare recipients to jobs and related activities. A key element of the program is making the most efficient use of existing public, nonprofit and private transportation service providers.

XI. Over-the-Road Bus Accessibility Program

The amount made available for the Over-the-Road Bus Accessibility (OTRB) Program in the FY 2002 DOT Appropriations Act is $6,950,000, which is the guaranteed funding level under TEA–21. Of this amount, $5,250,000 is available to providers of intercity fixed-route service, and $1,700,000 is available to other providers of over-the-road bus services, including local fixed-route service, commuter service, and charter and tour service.

The OTRB program authorizes FTA to make grants to operators of over-the-road buses to help finance the incremental capital and training costs of complying with the DOT over-the-road bus accessibility final rule, published on September 28, 1998 (63 FR 51670). Funds will be provided at 90 percent Federal share. FTA conducts a national solicitation of applications and grantees are selected on a competitive basis.

In FY 2001, a total of $3 million was available to intercity fixed-route

providers and $1.7 million was available to all other providers. FTA selected 61 applicants from among the 84 applications submitted for funding incremental capital and training costs of complying with DOT's OTRB Accessibility requirements.

A separate **Federal Register** Notice providing program guidance and application procedures for FY 2002 will be issued.

XII. Clean Fuels Formula Program

TEA–21 established the Clean Fuels Formula Grant Program under section 5308 of Title 49 U.S.C., to assist non-attainment and maintenance areas in achieving or maintaining attainment status and to support markets for emerging clean fuel technologies. Under the program, public transit agencies in maintenance and non-attainment areas (as defined by the EPA) are to apply for formula funds to acquire clean fuel vehicles. The legislation specified the program to be funded with $50 million from the bus category of the Capital Investment Program, and $50 million from the Urbanized Area Formula Program in each fiscal year of TEA–21. However, congressional appropriation actions in this fiscal year as well as in fiscal years 1999, 2000, and 2001 have provided no funds for this program.

A Notice of Proposed Rulemaking was published in the **Federal Register** on August 28, 2001 (66 FR 45561). The proposed rule establishes the procedures potential recipients must use to apply for this program. Comments on the proposed rule were due October 12, 2001. Responses to those comments and preparation of the final rule are in progress.

For further information contact Nancy Grubb, FTA Office of Resource Management and State Programs, at (202) 366–2053.

XIII. National Planning and Research Program

The amount made available to the National Planning and Research Program in the FY 2002 DOT Appropriations Act is $31,500,000, of which Congress allocated $15,500,000 for specific activities. These allocations are listed in Table 11.

The program's core effort is the deployment of technological innovation to improve personal mobility, enhance the safety and security of transit operations, minimize fuel consumption and air pollution, increase ridership and enhance the quality of life of all communities. Emphasis is placed on mainstreaming proven cost-effective technological innovation through the FTA planning and capital assistance programs. Primary target areas are security technologies to protect against weapons of mass destruction, safety systems for railroad grade crossing protection and shared-track operations, cost reduction in advances in bus technology, and bus rapid transit.

FTA is directing resources for research, development, demonstration and deployment activities associated with technology and other innovations in four priority areas:

- Safety and security systems—to improve driver operations, minimize pedestrian conflicts, reduce terrorist threats and to facilitate shared track operations;
- Transit buses—to reduce operating and maintenance costs through improved energy management; to introduce rapid bus operations; to foster trade opportunities; to deploy low emission vehicles; and to leverage the $600 million or more invested annually through the FTA Bus capital assistance program;
- Infrastructure—to support the $4.9 billion annual FTA capital investment; to protect the integrity of federally supported assets; and to facilitate the deployment of lower cost systems options for expanding capacity; and
- Knowledge Management—to expand U.S. transit industry professional capacity and participation in global markets.

For additional information contact Henry Nejako, Program Management Officer, Office of Research, Demonstration and Innovation, at (202) 366–3765.

XIV. Unit Values of Data for Urbanized Area Formula Program, Nonurbanized Area Formula Program, and Fixed Guideway Modernization

The dollar unit values of data derived from the computations of the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, and the Capital Investment Program—Fixed Guideway Modernization apportionments are displayed in Table 15 of this notice. To replicate an area's apportionment amount multiply its population, population density, and data from the NTD by the appropriate unit value.

XV. Period of Availability of Funds

The funds apportioned under the Metropolitan Planning Program and the Statewide Planning and Research Program, the Urbanized Area Formula Program, and Fixed Guideway Modernization, in this notice, will remain available to be obligated by FTA to recipients for three fiscal years following FY 2002. Any of these apportioned funds unobligated at the close of business on September 30, 2005, will revert to FTA for reapportionment under the respective program.

Funds apportioned to nonurbanized areas under the Nonurbanized Area Formula Program, including RTAP funds, will remain available for two fiscal years following FY 2002. Any such funds remaining unobligated at the close of business on September 30, 2004, will revert to FTA for reapportionment among the States under the Nonurbanized Area Formula Program. Funds allocated to States under the Elderly and Persons with Disabilities Program in this notice must be obligated by September 30, 2002. Any such funds remaining unobligated as of this date will revert to FTA for reapportionment among the States under the Elderly and Persons with Disabilities Program. The FY 2002 DOT Appropriations Act includes a provision requiring that FY 2002 New Starts and Bus funds not obligated for their original purpose as of September 30, 2004, shall be made available for other projects under 49 U.S.C. 5309.

JARC funds for projects selected by FTA for funding in FY 2002 will remain available for two fiscal years following FY 2002. Any such funds remaining unobligated at the close of business on September 30, 2004, will revert to FTA for reallocation under the JARC program.

Capital Investment Program funds for New Starts and Bus projects identified as having been extended in the FY 2002 Conference Report accompanying the FY 2002 DOT Appropriations Act will lapse September 30, 2002.

XVI. Automatic Pre-Award Authority to Incur Project Costs

A. Policy

FTA provides blanket or automatic pre-award authority to cover certain program areas described below. This pre-award authority allows grantees to incur project costs prior to grant approval and retain their eligibility for subsequent reimbursement after grant approval. The grantee assumes all risk and is responsible for ensuring that all conditions, which are described below, are met to retain eligibility. This automatic pre-award spending authority permits a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects. Prior to exercising pre-award authority, grantees must comply with the conditions and Federal requirements outlined in

paragraphs B and C immediately below. Failure to do so will render an otherwise eligible project ineligible for FTA financial assistance. In addition, grantees are strongly encouraged to consult with the appropriate FTA regional office if there is any question regarding the eligibility of the project for future FTA funds or the applicability of the conditions and Federal requirements.

Pre-award authority was extended in the June 24, 1998 **Federal Register** Notice on TEA–21 to all formula funds and flexible funds that will be apportioned during the authorization period of TEA–21, 1998–2003. Pre-award authority also applies to Capital Investment Bus allocations identified in this notice. For such section 5309 Capital Investment Bus projects, the date that costs may be incurred is the date that the appropriation bill in which they are contained is enacted. Pre-award authority does not apply to Capital New Start funds, or to Capital Investment Bus projects not specified in this or previous notices, except as described in D below.

B. Conditions

Similar to the FTA Letter of No Prejudice (LONP) authority, the conditions under which this authority may be utilized are specified below:

(1) The pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2) All FTA statutory, procedural, and contractual requirements must be met.

(3) No action will be taken by the grantee that prejudices the legal and administrative findings that the Federal Transit Administrator must make in order to approve a project.

(4) Local funds expended by the grantee pursuant to and after the date of the pre-award authority will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).

(5) The Federal amount of any future FTA assistance awarded to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.

(6) For funds to which the pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.

(7) The Financial Status Report, in TEAM–Web, must indicate the use of pre-award authority.

C. Environmental, Planning, and Other Federal Requirements

FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed before State or local funds are spent on implementing activities such as final design, construction, and acquisition for a project that is expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA environmental regulations (23 CFR part 771), the grantee may not advance the project beyond planning and preliminary engineering before FTA has issued either a categorical exclusion (refer to 23 CFR part 771.117(d)), a finding of no significant impact, or a record of decision. The conformity requirements of the Clean Air Act (40 CFR part 93) also must be fully met before the project may be advanced with non-Federal funds.

Similarly, the requirement that a project be included in a locally adopted metropolitan transportation improvement program and federally approved statewide transportation improvement program must be followed before the project may be advanced with non-Federal funds. For planning projects, the project must be included in a locally approved Planning Work Program that has been coordinated with the State. In addition, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this increased administrative flexibility requires a grantee to make certain that no Federal requirements are circumvented through the use of pre-award authority. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate regional office.

Before an applicant may incur costs for activities expected to be funded by New Start funds, or for Bus Capital projects not listed in this notice or previous notices, it must first obtain a written LONP from FTA. To obtain an LONP, a grantee must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office.

D. Pre-Award Authority for New Starts Projects

1. Preliminary Engineering and Final Design

New Starts projects are required to follow a federally defined planning process. This process includes, among other things, FTA approval of entry of a project into preliminary engineering and approval to enter final design. The grantee request for entry into preliminary engineering and the request for entry into final design both document the project and how it meets the New Starts statutory criteria for project evaluation and rating in detail. With FTA approval to enter preliminary engineering, and subsequent approval to enter final design, FTA will automatically extend pre-award authority to that phase of project development.

2. Acquisition Activities

In the past, FTA provided applicant grantees pre-award authority to incur costs for right-of-way acquisition for projects funded by sources other than New Starts funds under the conditions described in paragraphs A, B and C, above. With the issuance of this Notice, FTA will extend automatic pre-award authority for the acquisition of real property and real property rights for a New Starts project upon completion of the National Environmental Policy Act (NEPA) review of that project. NEPA review is completed when FTA signs an environmental Record of Decision (ROD) or Finding of No Significant Impact (FONSI), or makes a Categorical Exclusion (CE) determination. The real estate acquisition activities for a proposed New Starts project prior to approval of Federal funding, no longer require a Letter of No Prejudice (LONP) described in section XVII below. Real estate acquisition may now commence upon completion of the NEPA review process.

Most major FTA-assisted projects require the acquisition of residential and/or business properties and the relocation of the occupants. Often real property rights, like railroad track usage rights, are needed. With limited exceptions set forth in FTA's NEPA guidance, the purchase of real property can prejudice the consideration of less damaging alternatives and may not take place until the NEPA process has been completed by FTA's signing of an environmental ROD or FONSI or making a CE determination.

For FTA-assisted projects, acquisition of real property must be made in accordance with the requirements of the Uniform Relocation Assistance and Real

Property Acquisition Policies Act (URA) and its implementing regulations (49 CFR part 24). Compliance with the URA regulations requires substantial lead-time. Properties must be appraised, persons who will be displaced must be educated about their relocation rights, proper housing must be found for displaced residents, and businesses must be relocated in accordance with the URA. In some cases, the remediation of contaminated soils or groundwater, or the removal of underground storage tanks must be dealt with during the acquisition process. Potentially responsible parties to the contamination must be identified and their financial liability negotiated or litigated. Acquisition of railroad right-of-way or usage rights is frequently a negotiated transaction that is fundamental to the transit project and therefore should be negotiated as early as possible after the completion of the NEPA process. Delays in the closing on an acquisition can lead to inconvenience or hardship for residents and businesses that are being displaced. Delays can also lead to increases in property values or in the current owners' financial expectations that prolong negotiated settlements.

To facilitate the acquisition process for New Starts projects, FTA will extend automatic pre-award authority to the acquisition of real property and real property rights with the signing of the environmental ROD or FONSI or the CE determination. This pre-award authority is strictly limited to costs incurred to acquire real property and real property rights and to provide relocation assistance in accordance with the URA regulation. It is limited to the acquisition of real property and real property rights that are explicitly identified in the final EIS, EA or CE determination, as needed for the selected alternative that is the subject of the FTA-signed ROD or FONSI, or the CE determination. It does not cover site preparation, demolition, or any other activity that is not strictly necessary to comply with the URA. At FTA's discretion, these other activities may be covered by Letters of No Prejudice, described in section XVII, below. This pre-award authority does not cover the acquisition of construction equipment or vehicles or any other acquisition except that of real property and real property rights.

Grant applicants should use this pre-award authority for real property very discreetly with a clear understanding that it does not constitute a funding commitment by FTA. On occasion, even projects that received a ''recommended'' rating from FTA under the New Starts regulation (49 CFR part 611) have not received a Full Funding Grant Agreement from FTA simply because the competition for the limited New Starts funds is so intense.

This pre-award authority for the acquisition of real property and real property rights, in accordance with the URA and after FTA's signing of a ROD or FONSI or making a CE determination, is intended to streamline the project delivery process, to enhance relocation services for residents and businesses, and to avoid the escalation in the cost of real property caused by delays in its acquisition. In granting this pre-award authority, FTA is aware that the risk taken by the grant applicant in acquiring real property without an FTA commitment is somewhat mitigated by the re-sale value of the real property, in the event that FTA funding assistance is not ultimately forthcoming and the project is abandoned.

3. National Environmental Policy Act (NEPA) Activities

The National Environmental Policy Act (NEPA) requires that projects with potentially significant adverse impacts proposed for Federal funding assistance be subjected to a public and interagency review of the need for the project, its environmental and community impacts, and alternatives with potentially less damaging actions. Projects for which FTA experience indicates there are no significant impacts are subject to NEPA, but categorically excluded from the more rigorous levels of NEPA review.

FTA regulations (23 CFR 771.105(e)) state that the costs incurred by a grant applicant for the preparation of environmental documents requested by FTA are eligible for FTA assistance. FTA has previously extended pre-award authority to incur costs for environmental reviews and documents from other funding sources but not from New Starts funds.

With issuance of this notice, FTA extends automatic pre-award authority for costs incurred to conduct the NEPA environmental review, including historic preservation activities, and to prepare an EIS, EA, CE, or other environmental documents for a proposed New Starts project, effective as of the date of the federal approval of the relevant Statewide Transportation Improvement Program (STIP) or STIP amendment that includes the project. This pre-award authority applies to New Starts funding, as well as other funding sources. This pre-award authority is strictly limited to costs incurred to conduct the NEPA process and prepare environmental and historic preservation documents. It does not cover preliminary engineering activities beyond those absolutely necessary for NEPA compliance. As with any pre-award authority, FTA participation in costs incurred is not guaranteed.

This pre-award authority for using New Starts funds for environmental and historic preservation work for proposed New Starts projects, as long as those projects are in FTA-approved STIPs, is being provided for the first time with this Notice. It is intended to streamline the NEPA process in accordance with TEA–21 section 1309, ''Environmental Streamlining,'' by eliminating unnecessary delays in starting up the conceptual engineering and environmental reviews, the public involvement process, and the interagency coordination process for New Starts projects.

XVII. Letters of No Prejudice (LONP) Policy

A. Policy

Letter of No Prejudice (LONP) authority allows an applicant to incur costs on a future project utilizing non-Federal resources with the understanding that the costs incurred subsequent to the issuance of the LONP may be reimbursable as eligible expenses or eligible for credit toward the local match should FTA approve the project at a later date. LONPs are applicable to projects not covered by automatic pre-award authority. The majority of LONPs will be for section 5309 New Starts funds not covered under a full funding grant agreement or for section 5309 Bus funds not yet appropriated by Congress. At the end of an authorization period, there may be LONPs for formula funds beyond the life of the current authorization.

Under most circumstances the LONP will cover the total project. Under certain circumstances the LONP may be issued for local match only, for example, to permit real estate purchased as it becomes available to be used for match for the project at a later date.

B. Conditions

The following conditions apply to all LONPs.

(1) LONP pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2) All FTA, DOT, and other Federal statutory, regulatory, procedural, and contractual requirements must be met.

(3) No action will be taken by the grantee that prejudices the legal and

administrative findings that the Federal Transit Administrator must make in order to approve a project.

(4) Local funds expended by the grantee pursuant to and after the date of the LONP will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).

(5) The Federal amount of any future FTA assistance to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.

(6) For funds to which this pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.

C. Environmental, Planning, and Other Federal Requirements

As with automatic pre-award authority, FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed before State or local funds are spent on implementation activities such as final design, construction, or acquisition for a project expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA's environmental regulations (23 CFR part 771), the grantee may not advance the project beyond planning and preliminary engineering before FTA has approved either a categorical exclusion (see 23 CFR section 771.117(d)), a finding of no significant impact, or a record of decision. The conformity requirements of the Clean Air Act (40 CFR part 93) also must be fully met before the project may be advanced with non-Federal funds.

Similarly, the requirement that a capital project be included in a locally adopted metropolitan transportation improvement program and federally approved statewide transportation improvement program must be followed before the project may be advanced with non-Federal funds. For planning projects, the project must be included in a locally approved Planning Work Program that has been coordinated with the State. In addition, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this pre-award authority requires a grantee to make certain that no Federal requirements are circumvented. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate FTA regional office.

D. Request for LONP

Before an applicant may incur costs for a project not covered by automatic pre-award authority, it must first submit a written request for an LONP to the appropriate regional office. This written request must include a description of the project for which pre-award authority is desired and a justification for the request.

XVIII. FTA Home Page on the Internet

FTA provides extended customer service by making available transit information on the FTA Web site, including this Apportionment Notice. Also posted on the Web site are FTA program Circulars: C9030.1C, Urbanized Area Formula Program: Grant Application Instructions, dated October 1, 1998; C9040.1E, Nonurbanized Area Formula Program Guidance and Grant Application Instructions, dated October 1, 1998; C9070.1E, The Elderly and Persons with Disabilities Program Guidance and Application Instructions, dated October 1, 1998; C9300.1A, Capital Program: Grant Application Instructions, dated October 1, 1998; 4220.1D, Third Party Contracting Requirements, dated April 15, 1996; C5010.1C, Grant Management Guidelines, dated October 1, 1998; and C8100.1B, Program Guidance and Application Instructions for Metropolitan Planning Program Grants, dated October 25, 1996. The FY 2002 Annual List of Certifications and Assurances is also posted on the FTA Web site. Other documents on the FTA Web site of particular interest to public transit providers and users include the annual Statistical Summaries of FTA Grant Assistance Programs, and the National Transit Database Profiles.

FTA circulars are listed at *http://www.fta.dot.gov/library/admin/checklist/circulars.htm.* Other guidance of interest to Grantees can be found at *http://www.fta.dot.gov/grantees/index.html.* Grantees should check the FTA Web site frequently to keep up to date on new postings.

XIX. FTA Fiscal Year 2002 Annual List of Certifications and Assurances

The ''Fiscal Year 2002 Annual List of Certifications and Assurances'' is published in conjunction with this notice. It appears as a separate Part of the **Federal Register** on the same date whenever possible. The FY 2002 list contains several changes to the previous year's **Federal Register** publication. As in previous years, the grant applicant should certify electronically. Under certain circumstances the applicant may enter its PIN number in lieu of an electronic signature provided by its attorney, provided the applicant has on file the current affirmation of its attorney in writing dated this Federal fiscal year. The applicant is advised to contact the appropriate FTA Regional Office for electronic procedure information.

The ''Fiscal Year 2002 Annual List of Certifications and Assurances'' is accessible on the Internet at *http://www.fta.dot.gov/library/legal/ca.htm.* Any questions regarding this document may be addressed to the appropriate Regional Office.

XX. Grant Application Procedures

All applications for FTA funds should be submitted to the appropriate FTA Regional Office. FTA utilizes TEAM-Web, an Internet accessible electronic grant application system, and all applications should be filed electronically. FTA has provided exceptions to the requirement for electronic filing of applications for certain new, non-traditional grantees in the Job Access and Reverse Commute and Over-the-Road Bus Accessibility programs as well as to a few grantees that have not successfully connected to or accessed TEAM-Web.

In FY 2001, FTA established a 90-day goal for processing and approving all capital, planning and operating grants, including the section 5307 Urbanized Area Formula Program, section 5309 Fixed Guideway Modernization, New Starts and Bus Programs, the section 5310 Elderly and Persons with Disabilities Program, the section 5311 Nonurbanized Area Formula Program, the TEA–21 Job Access and Reverse Commute Program, the TEA–21 Over-the-Road Bus Accessibility Program, section 5303 Metropolitan Planning Program, and section 5313(b) Statewide Planning and Research Program. The 90-day processing time begins with the receipt of a complete application by the Regional Office. In order for an application to be considered complete, it must meet the following requirements: all projects must be contained in an approved STIP (when required), all environmental findings must be made by FTA, there must be an adequate project description, local share must be secure, all required civil rights submissions must have been submitted, and certifications and assurances must

be properly submitted. Once an application is complete, the FTA Regional Office will assign a project number and when required submit the application to the Department of Labor for a certification under section 5333(b). The FTA circulars referenced below contain more information regarding application contents and complete applications. State applicants for section 5311 are reminded that they must certify to DOL that all subrecipients have agreed to the standard labor protection warranty for section 5311 and provide DOL with other related information for each grant.

Formula and Capital Investment grant applications should be prepared in conformance with the following FTA Circulars: Program Guidance and Application Instructions for Metropolitan Planning Program Grants—C8100.1B, October 25, 1996; Urbanized Area Formula Program: Grant Application Instructions—C9030.1C, October 1, 1998; Nonurbanized Area Formula Program Guidance and Grant Application Instructions—C9040.1E, October 1, 1998; Section 5310 Elderly and Persons with Disabilities Program Guidance and Application Instructions C9070.1E, October 1, 1998; and Section 5309 Capital Program: Grant Application Instructions—C9300.1A, October 1, 1998. Guidance on preparation of applications for State Planning and Research funds may be obtained from each FTA Regional Office. Copies of circulars are available from FTA Regional Offices as well as the FTA Web site.

Applications for grants containing transferred FHWA funds (STP, CMAQ, and others) should be prepared in the same manner as for funds under the program to which they are being transferred. The application for flexible funds needs to specifically indicate the type and amount of flexible funds being transferred to FTA. The application should also describe which items are being funded with transferred funds, consistent with the Statewide Transportation Improvement Program (STIP).

Issued on: December 26, 2001.

Jennifer L. Dorn,

Administrator.

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FEDERAL TRANSIT ADMINISTRATION

TABLE 1

FY 2002 APPROPRIATIONS FOR GRANT PROGRAMS

SOURCE OF FUNDS	APPROPRIATION	
TRANSIT PLANNING AND RESEARCH PROGRAMS		
Section 5303 Metropolitan Planning Program	$55,422,400	
Reapportioned Funds Added	240,571	
Total Apportioned	$55,662,971	
Section 5313(b) State Planning and Research Program	$11,577,600	
Reapportioned Funds Added	121,048	
Total Apportioned	$11,698,648	
Section 5311(b)(2) Rural Transit Assistance Program (RTAP)	$5,250,000	
Reapportioned Funds Added	20,729	
Total Apportioned	$5,270,729	
Section 5314 National Planning and Research Program	$31,500,000	
FORMULA PROGRAMS	$3,542,000,000	a/
Alaska Railroad (Section 5307)	4,849,950	
Less Oversight (one-half percent)	(24,250)	
Total Available	4,825,700	
Section 5308 Clean Fuels Formula Program	(50,000,000)	
Over-the-Road Bus Accessibility Program	6,950,000	
VIII Paralympiad for the Disabled in Salt Lake City	$5,000,000	
Section 5307 Urbanized Area Formula Program		
91.23% of Total Available for Sections 5307, 5311, and 5310	$3,216,040,006	
Less Oversight (one-half percent)	(16,080,200)	
Reapportioned Funds Added	7,092,285	
Total Apportioned	$3,207,052,091	
Section 5311 Nonurbanized Area Formula Program		
6.37% of Total Available for Sections 5307, 5311, and 5310	$224,555,243	
Less Oversight (one-half percent)	(1,122,776)	
Reapportioned Funds Added	2,977,622	
Total Apportioned	$226,410,089	
Section 5310 Elderly and Persons with Disabilities Formula Program		
2.4% of Total Available for Sections 5307, 5311, and 5310	$84,604,801	
Reapportioned Funds Added	325,448	
Total Apportioned	$84,930,249	
CAPITAL INVESTMENT PROGRAM	$2,891,000,000	
Section 5309 Fixed Guideway Modernization	$1,136,400,000	
Less Oversight (one percent)	(11,364,000)	
Reapportioned Funds Added	547,205	
Total Apportioned	$1,125,583,205	
Section 5309 New Starts	$1,136,400,000	
Less Oversight (one percent)	(11,364,000)	
Reallocated Funds Added	1,488,840	b/
Total Allocated	$1,126,524,840	
Section 5309 Bus	$618,200,000	c/
Less Oversight (one percent)	(6,182,000)	
Reallocated Funds Added	1,733,658	d/
Total Allocated	$613,751,658	
JOB ACCESS AND REVERSE COMMUTE PROGRAM (Section 3037, TEA-21)	$125,000,000	
TOTAL APPROPRIATION (Above Grant Programs)	$6,661,750,000	

a/ The FY 2002 DOT Appropriations Act transfers $50 million appropriated for the Cleans Fuels Formula Program to the Section 5309 Bus category.

b/ FY 2002 Conference Report reallocated unobligated balances from specified New Starts projects to FY 2002 projects.

c/ Includes $50 million transferred from the Cleans Fuels Formula Program.

d/ FY 2002 Conference Report supplemented FY 2002 Bus funds with funds made available from projects included in previous Appropriations Acts.

FEDERAL TRANSIT ADMINISTRATION

TABLE 2

FY 2002 SECTION 5303 METROPOLITAN PLANNING PROGRAM
AND SECTION 5313(b) STATEWIDE PLANNING AND RESEARCH PROGRAM APPORTIONMENTS

STATE	SECTION 5303 APPORTIONMENT	SECTION 5313(b) APPORTIONMENT
Alabama	$487,549	$128,085
Alaska	222,652	58,493
Arizona	886,707	184,891
Arkansas	222,652	58,493
California	9,489,958	1,772,769
Colorado	724,233	165,526
Connecticut	650,704	170,947
Delaware	222,652	58,493
District of Columbia	300,176	58,493
Florida	3,035,249	708,491
Georgia	1,074,487	226,984
Hawaii	222,652	58,493
Idaho	222,652	58,493
Illinois	3,252,532	590,223
Indiana	789,613	187,444
Iowa	249,782	65,621
Kansas	288,755	70,908
Kentucky	345,873	88,885
Louisiana	597,687	155,098
Maine	222,652	58,493
Maryland	1,292,294	249,315
Massachusetts	1,576,195	329,294
Michigan	2,030,568	404,621
Minnesota	824,522	165,047
Mississippi	222,652	58,493
Missouri	911,616	193,714
Montana	222,652	58,493
Nebraska	222,652	58,493
Nevada	241,419	63,424
New Hampshire	222,652	58,493
New Jersey	2,759,494	461,499
New Mexico	222,652	58,493
New York	5,603,614	982,654
North Carolina	665,852	174,927
North Dakota	222,652	58,493
Ohio	1,918,238	463,409
Oklahoma	358,870	94,279
Oregon	403,109	98,854
Pennsylvania	2,487,903	501,733
Puerto Rico	603,336	147,944
Rhode Island	222,652	58,493
South Carolina	378,053	99,319
South Dakota	222,652	58,493
Tennessee	587,721	154,401
Texas	3,782,241	791,651
Utah	349,651	91,857
Vermont	222,652	58,493
Virginia	1,244,077	266,598
Washington	991,575	223,786
West Virginia	222,652	58,493
Wisconsin	694,234	171,576
Wyoming	222,652	58,493
TOTAL	$55,662,971	$11,698,648

FEDERAL HIGHWAY ADMINISTRATION

TABLE 3

FY 2002 ESTIMATED METROPOLITAN PLANNING PROGRAM (PL) APPORTIONMENTS

STATE	PL APPORTIONMENT
Alabama	$2,172,212
Alaska	978,212
Arizona	3,135,595
Arkansas	978,212
California	30,064,602
Colorado	2,807,188
Connecticut	2,899,127
Delaware	978,212
District of Columbia	978,212
Florida	12,015,418
Georgia	3,849,460
Hawaii	978,212
Idaho	978,212
Illinois	10,009,701
Indiana	3,178,898
Iowa	1,112,869
Kansas	1,202,535
Kentucky	1,507,419
Louisiana	2,630,335
Maine	978,212
Maryland	4,228,172
Massachusetts	5,584,556
Michigan	6,862,043
Minnesota	2,799,059
Mississippi	978,212
Missouri	3,285,222
Montana	978,212
Nebraska	978,212
Nevada	1,075,613
New Hampshire	978,212
New Jersey	7,826,649
New Mexico	978,212
New York	16,665,004
North Carolina	2,966,619
North Dakota	978,212
Ohio	7,859,037
Oklahoma	1,598,899
Oregon	1,676,482
Pennsylvania	8,508,969
Rhode Island	978,212
South Carolina	1,684,368
South Dakota	978,212
Tennessee	2,618,517
Texas	13,425,756
Utah	1,557,825
Vermont	978,212
Virginia	4,521,283
Washington	3,795,230
West Virginia	978,212
Wisconsin	2,909,780
Wyoming	978,212
TOTAL	$195,642,258

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT	APPORTIONMENT
OVER 1,000,000 IN POPULATION	$23,475,898	$2,347,589,876
200,000-1,000,000 IN POPULATION	5,482,662	548,266,190
50,000-200,000 IN POPULATION	----------	311,196,025
NATIONAL TOTAL	$28,958,560	$3,207,052,091

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT a/	APPORTIONMENT
Amounts Apportioned to Urbanized Areas 1,000,000 and Over in Population:		
Atlanta, GA	$441,438	$44,143,810
Baltimore, MD	368,383	36,838,330
Boston, MA	901,074	90,107,384
Chicago, IL-Northwestern IN	2,008,327	200,832,658
Cincinnati, OH-KY	164,022	16,402,161
Cleveland, OH	273,860	27,385,973
Dallas-Fort Worth, TX	455,083	45,508,300
Denver, CO	304,543	30,454,334
Detroit, MI	391,731	39,173,052
Ft Lauderdale-Hollywood-Pompano Beach, FL.	250,077	25,007,664
Houston, TX	516,633	51,663,288
Kansas City, MO-KS	119,183	11,918,318
Los Angeles, CA	2,223,973	222,397,333
Miami-Hialeah, FL	368,305	36,830,539
Milwaukee, WI	212,130	21,212,977
Minneapolis-St. Paul, MN	366,880	36,688,020
New Orleans, LA	167,235	16,723,529
New York, NY-Northeastern NJ	6,575,248	657,524,791
Norfolk-Virginia Beach-Newport News, VA	155,388	15,538,813
Philadelphia, PA-NJ	1,147,898	114,789,846
Phoenix, AZ	262,326	26,232,617
Pittsburgh, PA	333,816	33,381,559
Portland-Vancouver, OR-WA	281,757	28,175,729
Riverside-San Bernardino, CA	200,791	20,079,119
Sacramento, CA	154,227	15,422,661
San Antonio, TX	196,902	19,690,205
San Diego, CA	474,013	47,401,274
San Francisco-Oakland, CA	1,292,544	129,254,383
San Jose, CA	359,753	35,975,296
San Juan, PR	328,298	32,829,765
Seattle, WA	620,413	62,041,338
St. Louis, MO-IL	265,179	26,517,914
Tampa-St. Petersburg-Clearwater, FL	179,651	17,965,147
Washington, DC-MD-VA	1,114,817	111,481,749
TOTAL	$23,475,898	$2,347,589,876

a/ The amount listed for transit enhancement is included in the apportionment amount for the urbanized area.

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT a/	APPORTIONMENT
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in population		
Akron, OH	$67,208	$6,720,813
Albany-Schenectady-Troy, NY	65,918	6,591,802
Albuquerque, NM	57,876	5,787,566
Allentown-Bethlehem-Easton, PA-NJ	55,040	5,504,045
Anchorage, AK	27,509	2,750,930
Ann Arbor, MI	40,088	4,008,800
Augusta, GA-SC	18,758	1,875,827
Austin, TX	126,897	12,689,720
Bakersfield, CA	42,309	4,230,878
Baton Rouge, LA	43,388	4,338,812
Birmingham, AL	43,205	4,320,461
Bridgeport-Milford, CT	77,463	7,746,314
Buffalo-Niagara Falls, NY	128,390	12,839,011
Canton, OH	36,489	3,648,857
Charleston, SC	36,077	3,607,716
Charlotte, NC	75,799	7,579,873
Chattanooga, TN-GA	24,597	2,459,705
Colorado Springs, CO	40,327	4,032,695
Columbia, SC	28,455	2,845,495
Columbus, GA-AL	17,527	1,752,660
Columbus, OH	122,178	12,217,764
Corpus Christi, TX	37,863	3,786,317
Davenport-Rock Island-Moline, IA-IL	30,920	3,092,040
Dayton, OH	123,444	12,344,382
Daytona Beach, FL	31,286	3,128,630
Des Moines, IA	46,940	4,694,007
Durham, NC	39,789	3,978,926
El Paso, TX-NM	84,725	8,472,495
Fayetteville, NC	20,015	2,001,523
Flint, MI	55,273	5,527,316
Fort Myers-Cape Coral, FL	28,831	2,883,143
Fort Wayne, IN	22,623	2,262,341
Fresno, CA	62,193	6,219,271
Grand Rapids, MI	53,691	5,369,123
Greenville, SC	15,860	1,585,996
Harrisburg, PA	39,490	3,948,953
Hartford-Middletown, CT	102,532	10,253,177
Honolulu, HI	229,127	22,912,703
Indianapolis, IN	99,359	9,935,942
Jackson, MS	20,277	2,027,726
Jacksonville, FL	91,069	9,106,880
Knoxville, TN	28,179	2,817,936
Lansing-East Lansing, MI	39,749	3,974,858
Las Vegas, NV	173,923	17,392,285
Lawrence-Haverhill, MA-NH	37,151	3,715,112
Lexington-Fayette, KY	24,504	2,450,423

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	ONE PERCENT TRANSIT ENHANCEMENT a/	APPORTIONMENT
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in population (continued)		
Little Rock-North Little Rock, AR	30,836	3,083,572
Lorain-Elyria, OH	17,447	1,744,741
Louisville, KY-IN	110,373	11,037,255
Madison, WI	53,120	5,311,962
McAllen-Edinburg-Mission, TX	17,430	1,743,017
Melbourne-Palm Bay, FL	27,150	2,715,045
Memphis, TN-AR-MS	103,327	10,332,723
Mobile, AL	23,350	2,334,985
Modesto, CA	32,325	3,232,473
Montgomery, AL	14,365	1,436,466
Nashville, TN	53,712	5,371,159
New Haven-Meriden, CT	124,508	12,450,838
Ogden, UT	34,006	3,400,590
Oklahoma City, OK	56,227	5,622,744
Omaha, NE-IA	58,308	5,830,808
Orlando, FL	174,620	17,461,987
Oxnard-Ventura, CA	77,629	7,762,948
Pensacola, FL	22,677	2,267,714
Peoria, IL	23,236	2,323,559
Providence-Pawtucket, RI-MA	169,156	16,915,572
Provo-Orem, UT	32,455	3,245,536
Raleigh, NC	32,901	3,290,068
Reno, NV	36,159	3,615,897
Richmond, VA	68,837	6,883,690
Rochester, NY	77,378	7,737,761
Rockford, IL	20,531	2,053,140
Salt Lake City, UT	150,096	15,009,635
Sarasota-Bradenton, FL	48,669	4,866,942
Scranton-Wilkes-Barre, PA	35,307	3,530,654
Shreveport, LA	27,107	2,710,686
South Bend-Mishawaka, IN-MI	33,690	3,369,027
Spokane, WA	63,461	6,346,128
Springfield, MA-CT	65,656	6,565,574
Stockton, CA	62,513	6,251,267
Syracuse, NY	49,992	4,999,151
Tacoma, WA	114,028	11,402,812
Toledo, OH-MI	54,006	5,400,571
Trenton, NJ-PA	48,387	4,838,684
Tucson, AZ	87,228	8,722,806
Tulsa, OK	49,105	4,910,522
West Palm Beach-Boca Raton-Delray Bch, FL	186,978	18,697,777
Wichita, KS	34,291	3,429,095
Wilmington, DE-NJ-MD-PA	87,820	8,782,003
Worcester, MA-CT	48,812	4,881,171
Youngstown-Warren, OH	29,142	2,914,186
TOTAL	$5,482,662	$548,266,190

a/ The amount listed for transit enhancement is included in the apportionment amount for the urbanized area.

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
Amounts Apportioned to State Governors for Urbanized Areas 50,000 to 200,000 in Population	
ALABAMA:	$5,785,051
Anniston, AL	558,008
Auburn-Opelika, AL	447,690
Decatur, AL	510,952
Dothan, AL	429,160
Florence, AL	597,886
Gadsden, AL	528,431
Huntsville	1,677,473
Tuscaloosa, AL	1,035,451
ALASKA:	$0
ARIZONA:	$1,514,271
Flagstaff, AZ	595,717
Yuma, AZ-CA (AZ)	918,554
ARKANSAS:	$2,210,305
Fayetteville-Springdale, AR	610,005
Fort Smith, AR-OK (AR)	830,384
Pine Bluff, AR	561,156
Texarkana, TX-AR (AR)	208,760
CALIFORNIA:	$33,856,850
Antioch-Pittsburg, CA	1,914,688
Chico, CA	835,991
Davis, CA	1,014,840
Fairfield, CA	1,232,560
Hemet-San Jacinto, CA	1,028,320
Hesperia-Apple Valley-Victorville, CA	1,311,837
Indio-Coachella, CA	621,797
Lancaster-Palmdale, CA	2,206,544
Lodi, CA	863,851
Lompoc, CA	530,538
Merced, CA	943,193
Napa, CA	985,534
Palm Springs, CA	1,227,811
Redding, CA	709,941
Salinas, CA	1,868,225
San Luis Obispo, CA	884,725
Santa Barbara, CA	2,890,232
Santa Cruz, CA	1,494,506
Santa Maria, CA	1,359,716
Santa Rosa, CA	2,636,339
Seaside-Monterey, CA	1,771,565
Simi Valley, CA	1,676,913
Vacaville, CA	1,018,009
Visalia	1,162,789
Watsonville, CA	640,601
Yuba City, CA	1,022,146
Yuma, AZ-CA (CA)	3,639

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
COLORADO:	$6,238,456
Boulder, CO	1,388,149
Fort Collins, C0	1,156,197
Grand Junction, CO	658,293
Greeley, CO	924,745
Longmont, CO	842,710
Pueblo, CO	1,268,362
CONNECTICUT:	$23,327,728
Bristol, CT	983,277
Danbury, CT-NY (CT)	4,145,409
New Britain, CT	1,841,176
New London-Norwich, CT	1,481,607
Norwalk, CT	4,343,565
Stamford, CT-NY (CT)	5,332,682
Waterbury, CT	5,200,012
DELAWARE:	$470,645
Dover, DE	470,645
FLORIDA:	$14,344,243
Deltona, FL	476,941
Fort Pierce, F	1,142,501
Fort Walton Beach, FL	1,107,505
Gainesville, FL	1,419,339
Kissimmee, FL	661,084
Lakeland, FL	1,450,996
Naples, FL	954,953
Ocala, FL	641,486
Panama City, FL	962,695
Punta Gorda, FL	629,544
Spring Hill, FL	481,253
Stuart, FL	839,705
Tallahassee, FL	1,617,975
Titusville, FL.	463,158
Vero Beach, FL	586,573
Winter Haven, FL.	908,535
GEORGIA:	$6,280,272
Albany, GA.	777,891
Athens, GA.	745,818
Brunswick, GA	429,193
Macon, GA.	1,394,248
Rome, GA.	437,538
Savannah, GA	1,824,225
Warner Robins, GA	671,359
HAWAII:	$1,669,130
Kailua, HI	1,669,130

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
IDAHO:	$3,303,509
Boise City, ID	2,021,464
Idaho Falls, ID	724,655
Pocatello, ID	557,390
ILLINOIS:	$15,131,732
Alton, IL	817,765
Aurora, IL	2,290,318
Beloit, WI-IL (IL)	104,517
Bloomington-Normal, IL	1,317,421
Champaign-Urbana, IL	1,859,136
Crystal Lake, IL	746,464
Decatur, IL	1,046,515
Dubuque, IA-IL (IL)	24,377
Elgin, IL	1,652,124
Joliet, IL	1,910,334
Kankakee, IL.	749,751
Round Lake Beach-McHenry, IL-WI (IL)	1,087,960
Springfield, IL.	1,525,050
INDIANA:	$8,825,483
Anderson, IN	713,351
Bloomington, IN	1,064,493
Elkhart-GosheN, IN	1,066,892
Evansville, IN-KY (IN)	1,976,410
Kokomo, IN	718,369
Lafayette-West Lafayette, IN	1,428,159
Muncie, IN	1,049,877
Terre Haute, IN	807,932
IOWA:	$4,804,491
Cedar Rapids, IA	1,493,075
Dubuque, IA-IL (IA)	726,736
Iowa City, IA	860,272
Sioux City, IA-NE-SD (IA)	794,547
Waterloo-Cedar Falls, IA	929,861
KANSAS:	$2,332,729
Lawrence, KS	883,355
St. Joseph, MO-KS (KS)	7,292
Topeka, KS	1,442,082
KENTUCKY:	$1,838,572
Clarksville, TN-KY (KY)	224,344
Evansville, IN-KY (KY)	275,488
Huntington-Ashland, WV-KY-OH ((KY)	549,370
Owensboro, KY	789,370
LOUISIANA:	$5,445,102
Alexandria, LA	794,594
Houma, LA	558,918
Lafayette, LA	1,374,843
Lake Charles, LA	1,104,388
Monroe, LA	1,050,104
Slidell, LA	562,255

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
MAINE:	$2,369,807
Bangor, ME	486,955
Lewiston-Auburn, ME	565,835
Portland, ME	1,209,885
Portsmouth-Dover-Rochester, NH-ME (ME)	107,132
MARYLAND:	$2,635,340
Annapolis, MD	858,335
Cumberland, MD-WV (MD)	456,509
Frederick, MD	619,330
Hagerstown, MD-PA-WV (MD)	701,166
MASSACHUSETTS	$10,437,152
Brockton, MA	1,906,558
Fall River, MA-RI (MA)	1,859,513
Fitchburg-Leominster, MA	753,557
Hyannis, MA	538,120
Lowell, MA-NH (MA)	2,360,019
New Bedford, MA	2,045,072
Pittsfield, MA	487,124
Taunton, MA	487,189
MICHIGAN:	$8,906,650
Battle Creek, MI	743,873
Bay City, MI	831,026
Benton Harbor, MI	601,103
Holland, MI	674,628
Jackson, MI	830,569
Kalamazoo, MI	1,793,576
Muskegon, MI	1,094,007
Port Huron, MI	719,988
Saginaw, MI	1,617,880
MINNESOTA:	$3,174,068
Duluth, MN-WI (MN)	772,388
Fargo-Moorhead, ND-MN (MN)	446,601
Grand Forks, ND-MN (MN)	97,879
La Crosse, WI-MN (MN)	47,947
Rochester, MN	871,176
St. Cloud, MN	938,077
MISSISSIPPI:	$2,725,002
Biloxi-Gulfport, MS	1,687,127
Hattiesburg, MS	525,828
Pascagoula, MS	512,047
MISSOURI:	$3,755,091
Columbia, MO	741,351
Joplin, MO	520,634
Springfield, MO	1,748,930
St. Joseph, MO-KS (MO)	744,176

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
MONTANA:	$2,499,768
Billings, MT	964,059
Great Falls, MT	899,005
Missoula, MT	636,704
NEBRASKA:	$2,778,975
Lincoln, NE	2,658,761
Sioux City, IA-NE-SD (NE)	120,214
NEVADA:	$0
NEW HAMPSHIRE:	$3,374,678
Lowell, MA-NH (NH)	6,907
Manchester, NH	1,414,718
Nashua, NH	1,131,304
Portsmouth-Dover-Rochester, NH-ME (NH)	821,749
NEW JERSEY:	$2,556,942
Atlantic City, NJ	1,842,968
Vineland-Millville, NJ	713,974
NEW MEXICO:	$1,392,393
Las Cruces, NM	773,480
Santa Fe, NM	618,913
NEW YORK:	$7,725,440
Binghamton, NY	1,939,115
Danbury, CT-NY (NY)	26,283
Elmira, NY	796,262
Glens Falls, NY	547,577
Ithaca, NY	552,658
Newburgh, NY	717,643
Poughkeepsie, NY	1,507,504
Stamford, CT-NY (NY)	178
Utica-Rome, NY	1,638,220
NORTH CAROLINA:	$12,541,518
Asheville, NC	968,044
Burlington, NC	702,235
Gastonia, NC	1,028,240
Goldsboro, NC	533,990
Greensboro, NC	2,211,540
Greenville, NC	614,831
Hickory, NC	586,380
High Point, NC	988,854
Jacksonville, NC	954,700
Kannapolis, NC	689,211
Rocky Mount, NC	550,941
Wilmington, NC	901,139
Winston-Salem, NC	1,811,413

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
NORTH DAKOTA:	$2,436,797
Bismarck, ND	702,670
Fargo-Moorhead, ND-MN (ND)	1,016,240
Grand Forks, ND-MN (ND)	717,887
OHIO:	$6,700,060
Hamilton, OH	1,384,842
Huntington-Ashland, WV-KY-OH (OH)	352,655
Lima, OH	756,861
Mansfield, OH	730,720
Middletown, OH	952,155
Newark, OH	580,137
Parkersburg, WV-OH (OH)	85,905
Sharon, PA-OH (OH)	56,648
Springfield, OH	1,101,386
Steubenville-Weirton, OH-WV-PA (OH)	396,238
Wheeling, WV-OH (OH)	302,513
OKLAHOMA:	$1,042,828
Fort Smith, AR-OK (OK)	18,294
Lawton, OK	1,024,534
OREGON:	$5,438,321
Eugene-Springfield, OR	2,559,936
Longview, WA-OR (OR)	17,025
Medford, OR	791,139
Salem, OR	2,070,221
PENNSYLVANIA:	$14,216,739
Altoona, PA	971,201
Erie, PA	2,498,393
Hagerstown, MD-PA-WV (PA)	8,559
Johnstown, PA	895,599
Lancaster, PA	2,258,871
Monessen, PA	614,728
Pottstown, PA	583,344
Reading, PA	2,636,837
Sharon, PA-OH (PA)	408,395
State College, PA	849,968
Steubenville-Weirton, OH-WV-PA (PA)	2,968
Williamsport, PA	712,502
York, PA	1,775,374
PUERTO RICO:	$13,133,260
Aguadilla, PR	1,148,984
Arecibo, PR	1,073,581
Caguas, PR	2,811,557
Cayey, PR	831,273
Humacao, PR	719,451
Mayaguez, PR	1,545,739
Ponce, PR	3,439,733
Vega Baja-Manati, PR	1,562,942

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
RHODE ISLAND:	$835,969
Fall River, MA-RI (RI)	191,640
Newport, RI	644,329
SOUTH CAROLINA:	$3,540,237
Anderson, SC	476,133
Florence, SC	489,740
Myrtle Beach, SC	513,585
Rock Hill, SC	545,317
Spartanburg, SC	950,607
Sumter, SC	564,855
SOUTH DAKOTA:	$1,757,831
Rapid City, SD	559,842
Sioux City, IA-NE-SD (SD)	15,697
Sioux Falls, SD	1,182,292
TENNESSEE:	$2,720,560
Bristol, TN-Bristol, VA (TN)	254,290
Clarksville, TN-KY (TN)	620,004
Jackson, TN	469,284
Johnson City, TN	715,341
Kingsport, TN-VA (TN)	661,641
TEXAS:	$25,189,876
Abilene, TX	893,696
Amarillo, TX	1,657,606
Beaumont, TX	1,140,073
Brownsville, TX	1,657,056
Bryan-College Station, TX	1,109,960
Denton, TX	599,570
Galveston, TX	636,007
Harlingen, TX	814,398
Killeen, TX	1,557,720
Laredo, TX	1,967,344
Lewisville, TX	692,152
Longview, TX	680,991
Lubbock, TX	1,939,424
Midland, TX	849,759
Odessa, TX	942,691
Port Arthur, TX	1,028,333
San Angelo, TX	883,644
Sherman-Denison, TX	442,321
Temple, TX	502,157
Texarkana, TX-AR (TX)	405,200
Texas City, TX	1,077,100
Tyler, TX	842,262
Victoria, TX	583,875
Waco, TX	1,271,990
Wichita Falls, TX	1,014,547

FEDERAL TRANSIT ADMINISTRATION

TABLE 4

FY 2002 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	APPORTIONMENT
UTAH:	$503,466
Logan, UT	503,466
VERMONT:	$883,435
Burlington, VT	883,435
VIRGINIA:	$5,864,195
Bristol, TN-Bristol, VA (VA)	181,037
Charlottesville, VA	843,212
Danville, VA	478,843
Fredericksburg, VA	562,174
Kingsport, TN-VA (VA)	34,179
Lynchburg, VA	802,190
Petersburg, VA	1,016,957
Roanoke, VA	1,945,603
WASHINGTON:	$5,541,766
Bellingham, WA	652,929
Bremerton, WA	1,264,845
Longview, WA-OR (WA)	552,483
Olympia, WA	984,059
Richland-Kennewick-Pasco, WA	1,026,592
Yakima, WA	1,060,858
WEST VIRGINIA	$4,259,126
Charleston, WV	1,713,377
Cumberland, MD-WV (WV)	20,492
Hagerstown, MD-PA-WV (WV)	5,175
Huntington-Ashland, WV-KY-OH (WV)	961,956
Parkersburg, WV-OH (WV)	618,661
Steubenville-Weirton, OH-WV-PA (WV)	266,175
Wheeling, WV-OH (WV)	673,290
WISCONSIN:	$11,659,527
Appleton-Neenah, WI	2,135,066
Beloit, WI-IL (WI)	457,656
Duluth, MN-WI (WI)	200,465
Eau Claire, WI	836,278
Green Bay, WI	1,621,596
Janesville, WI	615,452
Kenosha, WI	1,120,619
La Crosse, WI-MN (WI)	889,641
Oshkosh, WI	776,407
Racine, WI	1,730,797
Round Lake Beach-McHenry, IL-WI (WI)	649
Sheboygan, WI	731,516
Wausau, WI	543,385
WYOMING:	$1,220,639
Casper, WY	559,938
Cheyenne, WY	660,701
TOTAL	$311,196,025

FEDERAL TRANSIT ADMINISTRATION

TABLE 5

FY 2002 SECTION 5311 NONURBANIZED AREA FORMULA APPORTIONMENTS, AND SECTION 5311(b)(2) RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS

STATE	SECTION 5311 APPORTIONMENT	SECTION 5311(b)(2) APPORTIONMENT
Alabama	$5,408,217	$110,761
Alaska	806,482	71,824
America Samoa	114,949	10,973
Arizona	2,367,575	85,033
Arkansas	4,323,645	101,584
California	10,552,607	154,289
Colorado	2,252,560	84,060
Connecticut	2,043,284	82,289
Delaware	509,750	69,313
Florida	6,783,682	122,399
Georgia	7,907,388	131,907
Guam	327,233	12,769
Hawaii	887,484	72,509
Idaho	1,790,472	80,150
Illinois	7,254,587	126,383
Indiana	7,007,767	124,295
Iowa	4,507,465	103,139
Kansas	3,585,545	95,338
Kentucky	5,918,953	115,082
Louisiana	4,895,402	106,422
Maine	2,362,223	84,988
Maryland	2,949,121	89,953
Massachusetts	3,160,562	91,743
Michigan	8,559,342	137,423
Minnesota	4,925,407	106,675
Mississippi	4,806,558	105,670
Missouri	5,736,831	113,541
Montana	1,450,423	77,273
Nebraska	2,188,506	83,518
Nevada	714,514	71,046
New Hampshire	1,891,845	81,008
New Jersey	2,704,938	87,887
New Mexico	2,126,491	82,993
New York	9,521,706	145,566
North Carolina	10,114,864	150,585
North Dakota	1,072,653	74,076
Northern Marianas	106,524	10,901
Ohio	10,297,635	152,132
Oklahoma	4,402,133	102,248
Oregon	3,495,332	94,575
Pennsylvania	11,487,119	162,196
Puerto Rico	3,432,713	94,045
Rhode Island	439,736	68,721
South Carolina	5,062,540	107,836
South Dakota	1,307,480	76,063
Tennessee	6,535,161	120,296
Texas	13,797,540	181,745
Utah	991,142	73,386
Vermont	1,169,000	74,891
Virgin Islands	250,204	12,117
Virginia	5,794,053	114,025
Washington	4,059,820	99,351
West Virginia	3,452,017	94,209
Wisconsin	5,964,681	115,469
Wyoming	834,228	72,059
TOTAL	$226,410,089	$5,270,729

FEDERAL TRANSIT ADMINISTRATION

TABLE 6

FY 2002 SECTION 5310 ELDERLY AND PERSONS WITH DISABILITIES APPORTIONMENTS

STATE	APPORTIONMENT
Alabama	$1,468,570
Alaska	203,969
America Samoa	53,110
Arizona	1,290,987
Arkansas	1,016,370
California	8,098,711
Colorado	994,098
Connecticut	1,143,839
Delaware	324,346
District of Columbia	321,700
Florida	5,454,489
Georgia	1,913,874
Guam	135,342
Hawaii	421,383
Idaho	431,983
Illinois	3,514,512
Indiana	1,828,609
Iowa	1,095,060
Kansas	912,819
Kentucky	1,406,077
Louisiana	1,410,730
Maine	548,202
Maryland	1,417,554
Massachusetts	2,055,994
Michigan	3,002,256
Minnesota	1,437,996
Mississippi	986,502
Missouri	1,854,865
Montana	393,670
Nebraska	634,064
Nevada	463,453
New Hampshire	436,043
New Jersey	2,474,824
New Mexico	553,754
New York	5,777,160
North Carolina	2,181,039
North Dakota	330,309
Northern Marianas	52,840
Ohio	3,669,212
Oklahoma	1,208,967
Oregon	1,121,700
Pennsylvania	4,405,634
Puerto Rico	1,062,427
Rhode Island	484,395
South Carolina	1,167,523
South Dakota	359,273
Tennessee	1,739,859
Texas	4,551,140
Utah	513,840
Vermont	291,405
Virgin Islands	138,131
Virginia	1,811,275
Washington	1,621,119
West Virginia	844,441
Wisconsin	1,655,754
Wyoming	243,051
TOTAL	$84,930,249

FEDERAL TRANSIT ADMINISTRATION
TABLE 7

FY 2002 SECTION 5309 FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS

STATE	AREA	APPORTIONMENT
AK	Anchorage - Alaska Railroad	$8,974,767 a/
AZ	Phoenix	1,607,863
CA	Los Angeles	32,101,641
CA	Oxnard-Ventura	1,593,794
CA	Riverside-San Bernardino	1,563,469
CA	Sacramento	3,239,800
CA	San Diego	8,359,306
CA	San Francisco	65,623,961
CA	San Jose	12,784,597
CO	Denver	1,962,656
CT	Hartford	1,422,340
CT	Southwestern Connecticut	37,648,244
DC	Washington	63,021,972
DE	Wilmington	931,285
FL	Ft. Lauderdale	2,777,503
FL	Jacksonville	106,261
FL	Miami	11,268,805
FL	Tampa	65,091
FL	West Palm Beach	2,623,003
GA	Atlanta	23,114,533
HI	Honolulu	1,094,132
IL	Chicago/Northwestern Indiana	132,997,580
IN	South Bend	694,918
LA	New Orleans	2,881,274
MA	Boston	66,662,945
MA	Lawrence-Haverhill	1,543,845
MA	Worcester	961,055
MD	Baltimore	8,847,163
MD	Baltimore Commuter Rail	17,862,511
MI	Detroit	487,176
MN	Minneapolis	5,094,649
MO	Kansas City	30,200
MO	St. Louis	4,235,476
NJ	Northeastern New Jersey	82,093,110
NJ	Trenton	1,383,464
NY	Buffalo	1,363,995
NY	New York	348,189,302
OH	Cleveland	12,572,133
OH	Dayton	4,783,739
OR	Portland	4,167,985
PA	Harrisburg	690,631
PA	Philadelphia/Southern New Jersey	91,250,611
PA	Pittsburgh	20,234,323
PR	San Juan	2,313,155
RI/MA	Providence	2,618,454
TN	Chattanooga	81,891
TN	Memphis	247,274
TX	Dallas	920,551
TX	Houston	6,967,030
VA	Norfolk	1,245,892
WA	Seattle	18,765,254
WA	Tacoma	754,108
WI	Madison	756,488
	TOTAL	$1,125,583,205

a/ Includes $7,047,502 set aside in accordance with Section 1124 of Pub. L. 106-554.

FEDERAL TRANSIT ADMINISTRATION

TABLE 8

FY 2002 SECTION 5309 NEW STARTS ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	ALLOCATION
AK/HI	Alaska or Hawaii Ferry Projects	$10,193,175
AK	Wasilla, Alaska, Alternative Route Project	2,475,033
AL	Birmingham, Alabama, Transit Corridor Project	1,980,026
AR	Little Rock, Arkansas, River Rail Project	1,980,026
AZ	Phoenix, arizona, Central Phoenix/East Valley Corridor Project	9,900,131
CA	San Francisco, California, BART Extension to the Airport Project	74,918,042
CA	Los Angeles, California, East Side Corridor Light Rail Transit Project	7,425,098
CA	Los Angeles, California, North Hollywood Extension Project	9,196,783
CA	Sacramento, California, Light Rail Transit Extension Project	324,724
CA	San Diego, California, Mission Valley East Light Rail Project	59,400,785
CA	San Diego, California, Mid Coast Corridor Project	990,013
CA	San Jose, California, Tasman West Light Rail Transit Project	112,204
CA	Oceanside - Escondido, California, Light Rail Extension Project	6,435,085
CA	Stockton, California, Altamont Commuter Rail Project	2,970,039
CA	Yosemite, California, Area Regional Transportation System Project	396,005
CO	Denver, Colorado, Southeast Corridor Light Rail Transit Project	54,450,720
CO	Denver, Colorado, Southwest Corridor Light Rail Transit Project	190,570
CT	Stamford, Connecticut, Urban Transitway Project	4,950,065
FL	Fort Lauderdale, Florida, Tri-County Commuter Rail Upgrades Project	26,730,353
FL	Miami, Florida, South Miami-Dade Busway Extension Project	4,950,065
GA	Atlanta, Georgia, Northline Extension	24,750,327
HI	Honolulu, Hawaii, Bus Rapid Transit Project	11,880,157
IA	Des Moines, Iowa, DSM Bus Feasibility Project	148,502
IA	Iowa, Metrolink Light Rail Feasibility Project	297,004
IA	Sioux City, Iowa, Light Rail Project	1,683,022
IA	Dubuque, Iowa Light Rail Feasibility Project	198,002
IL	Chicago, Illinois, METRA Commuter Rail and Line Extension Projects	54,450,720
IL	Chicago, Illinois, Douglas Branch Reconstruction Project	32,422,929
IL	Chicago, Illinois, Ravenswood Reconstruction Project	2,970,039
IN	Northeast Indianapolis, Indiana, Downtown Corridor Project	2,475,033
IN	Northern Indiana South Shore Commuter Rail Project	2,475,033
LA	New Orleans, Louisiana, Desire Corridor Streetcar Project	1,188,016
LA	New Orleans, Louisiana, Canal Street Car Line Project	14,850,196
MA	Boston, Massachusetts, South Boston Piers Transitway Project	10,525,072
MA	Boston, Massachusetts, Urban Ring Transit Project	495,006
MD	Baltimore, Maryland, Central Light Rail Transit Double Track Project	12,870,170
MD	Baltimore, Maryland, Rail Transit Project	1,485,020
MD	Maryland (MARC) Commuter Rail Improvements Projects	11,880,157
MD	Largo, Maryland, Metrorail Extension Project	54,450,720
MI	Grand Rapids, Michigan, ITP Metro Area, Major Corridor Project	742,510
MN	Minneapolis- Rice, Minnesota, Northstar Corridor Commuter Rail Project	9,900,131
MN	Minneapolis-St. Paul, Minnesota, Hiawatha Corridor Light Rail Transit Project	49,500,654
MO	Johnson County, Kansas-Kansas City, Missouri, I-35 Commuter Rail Project	1,485,020
MO	St. Louis-St. Clair, Missouri, MetroLink Extension Project	27,720,366
NC	Charlotte, North Carolina South Corridor Light Rail Transit Project	6,930,092
NC	Raleigh, North Carolina Triangle Transit Project	8,910,118
NH	Lowell, Massachusetts-Nashua, New Hampshire Commuter Rail Extension Project	2,970,039
NJ	Newark-Elizabeth Rail Link MOS-1 Project	19,800,262
NJ	New Jersey Hudson - Bergen Light Rail Transit Project	139,591,845
NM	Albuquerque, New Mexico, Light Rail Project	990,013

FEDERAL TRANSIT ADMINISTRATION

TABLE 8

FY 2002 SECTION 5309 NEW STARTS ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	ALLOCATION	
NY	Long Island Railroad, New York, East Side Access Project	14,597,169	
NY	New York, New York, Second Avenue Subway Project	1,980,026	
OH	Cleveland, Ohio, Euclid Corridor Transportation Project	5,940,079	
OH	Ohio, Central Ohio North Corridor Rail (COTA) Project	495,006	
OR	Portland, Oregon, Interstate MAX LRT Extension Project	63,360,837	
OR	Washington County, Orego, Wilsonville to Beaverton Commuter Rail Project	495,007	*a/*
PA	Philadelphia, Pennsylvania, Schuykill Valley Metro Project	8,910,118	
PA	Pittsburgh, Pennsylvania, North Shore-Connector Light Rail Transit project	7,920,105	
PA	Pittsburgh, Pennsylvania, Stage II Light Rail Transit Reconstruction Project	17,820,236	
PR	San Juan, Puerto Rico, Tren Urbano Project	39,600,523	
RI	Pawtucket-T.F. Green, Rhode Island, Commuter Rail and Maintenance Facility Project	4,950,065	
TN	Memphis, Tennessee, Medical Center Rail Extension Project	18,978,551	
TN	Nashville, Tennessee, East Corridor Commuter Rail Project	3,960,052	
TX	Dallas, Texas, North Central Light Rail Transit Extension Project	69,300,916	
TX	Forth Worth, Texas, Trinity Railway Express Project	1,980,026	
TX	Houston, Texas, Metro Advanced Transit Project	9,900,131	
UT	Salt Lake City, Utah, University Medical Center Light Rail Transit Extension Project	2,970,039	
UT	Salt Lake City, Utah, CBD to University Light Rail Transit Project	13,860,183	
VA	Dulles Corridor, Virginia, Bus Rapid Transit Project	24,750,327	
VA	Virginia Railway Express Station Improvements Project	2,970,039	
WA	Puget Sound, Washington, RTA Sounder Commuter Rail Project	19,800,262	
WI	Kenosha-Racine-Milwaukee Rail Extension Project	1,980,026	
	TOTAL ALLOCATION	$1,126,524,840	

a/ The provision at Section 322 of the FY 2002 DOT Appropriations Act amends Public Law 105-178, Section 3030(b) to authorize final design and construction.

FEDERAL TRANSIT ADMINISTRATION

TABLE 8A

PRIOR YEAR UNOBLIGATED SECTION 5309 NEW START ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	FY 2000 UNOBLIGATED ALLOCATIONS	FY 2001 UNOBLIGATED ALLOCATIONS	TOTAL UNOBLIGATED ALLOCATION
AK/HI	Hawaii Ferry Project	$0	$5,420,459	$5,420,459
AK	Girdwood, Alaska Commuter Rail Project	4,188,947	14,859,647	19,048,594
AL	Birmingham- Transit Corridor	2,135,786	4,953,216	7,089,002
CA	Hollister/Gilroy Branch Line Rail Extension Project	0	990,644	990,644
CA	Los Angeles-San Diego LOSSAN Corridor Project	981,079	2,971,930	3,953,009
CA	San Diego- Mid-Coast Corridor Project	607,494	0	607,494
CA	San Diego- Oceanside-Escondido Light Rail Project	0	9,906,431	9,906,431
CA	San Jose Tasman West Light Rail Project	0	12,135,379	12,135,379
CA	Stockton-Altamont Commuter Rail	981,079	5,943,859	6,924,938
CA	Orange County-Transitway Project	981,079	1,981,286	2,962,365
CO	Roaring Fork Valley Project	981,079	990,644	1,971,723
CT	Stamford-Fixed Guideway Connector	981,079	7,925,145	8,906,224
DE	Wilmington-Downtown Transit Connector	0	4,953,216	4,953,216
FL	South Miami-Dade Busway Extension	1,471,618	0	1,471,618
FL	Orlando-Central Florida Light Rail Project	0	2,971,930	2,971,930
FL	Pinellas County-Mobility Initiative Project	2,452,697	0	2,452,697
GA	Atlanta-North Line Extension Rail Project	0	24,766,080	24,766,080
GA	Atlanta-South Dekalb Lindbergh Light Rail Project	634,029	0	634,029
HI	Honolulu bus Rapid Transit Project	0	2,476,608	2,476,608
IL	Chicago Metra Commuter Rail Exts. & Upgrades-North Central	14,574,906	14,246,653	28,821,559
IL	Chicago Metra Commuter Rail Exts. & Upgrades-Southwest	708,000	12,120,036	12,828,036
IL	Chicago Metra Commuter Rail Exts. & Upgrades-Union Pacific West	3,055,382	8,305,822	11,361,204
IL	Chicago- Ravenswood Branch Line Project	3,433,775	0	3,433,775
IN	Indianapolis-Northeast Downtown Corridor Project	981,079	2,971,930	3,953,009
MA	Boston-North Shore Corridor	981,079	990,644	1,971,723
MA	Boston-South Boston Piers Transitway	0	4,000,000	4,000,000
MA	Boston-Urban Ring Project	981,079	990,644	1,971,723
MA/NH	Lowell, MA - Nashua, NH Commuter Rail Project	3	1,981,286	1,981,289
MD	MARC Expansion Programs [Silver Spring Intermodal Center & Penn-Camden Rail Connection]	735,809	4,953,215	5,689,024
ME	Calais Branch Rail Line Regional Transit Program	0	990,644	990,644
ME	Portland Marine Highway Project	0	1,981,286	1,981,286
MI	Detroit Metropolitan Airport Light Rail Project	0	495,321	495,321
MN	Minneapolis- Transitways Hiawatha Corridor Project	8,547,567	0	8,547,567
MN	Minneapolis-Twin Cities Transitways Projects	2,943,236	4,953,216	7,896,452
MO	Kansas City Southtown Corridor Project	0	3,467,251	3,467,251
MO	St. Louis-MetroLink Cross County Corridor Project	2,452,697	990,644	3,443,341
NC	Charlotte-North-South Corridor Transitway Project	1,780,575	4,953,216	6,733,791
NC	Raleigh-Durham-Chapel Hill-Triangle Transit Project	0	2,780,586	2,780,586
NJ	Northwest New Jersey-Northeast Pennsylvania Passenger Rail Project	0	990,644	990,644
NJ	West Trenton Rail Project	981,079	1,981,286	2,962,365
NY	New York - Second Avenue Subway	3,000,000		3,000,000
NM	Greater Albuquerque Mass Transit Project	6,867,551	495,321	7,362,872
NM	Santa Fe/El Dorado Rail Link	2,943,236	1,485,965	4,429,201
NV	Clark County RTC Fixed Guideway Project	1,488,750	1,485,965	2,974,715
OH	Canton-Akron-Cleveland Commuter Rail Project	0	1,981,286	1,981,286
OH	Cleveland-Euclid Corridor Improvement Project	0	3,962,572	3,962,572
OH	Dayton-Light Rail Study	981,079	0	981,079
PA	Harrisburg-Capital Area Transit Corridor 1 Commuter Rail	490,539	495,321	985,860

FEDERAL TRANSIT ADMINISTRATION

TABLE 8A

PRIOR YEAR UNOBLIGATED SECTION 5309 NEW START ALLOCATIONS

STATE	PROJECT LOCATION AND DESCRIPTION	FY 2000 UNOBLIGATED ALLOCATIONS	FY 2001 UNOBLIGATED ALLOCATIONS	TOTAL UNOBLIGATED ALLOCATION	
PA	Philadelphia-Reading SEPTA Schuylkill Valley Metro Project	3,924,315	9,906,431	13,830,746	
PA	Philadelphia-SEPTA Cross County Metro	150	1,981,286	1,981,436	
PA	Pittsburgh-North Shore- Central Business District Corridor	2,443,337	4,953,216	7,396,553	
PR	San Juan, Puerto Rico Tren Urbano	31,394,519	74,298,238	105,692,757	
RI	Pawtucket and T.F. Green Commuter Rail and Maintenance Facility	0	495,321	495,321	
SC	Charleston - Monobeam Corridor Project	2,452,697	0	2,452,697	
TN	Memphis-Medical Center Rail Extension Project	0	3	3	
TN	Nashville-Commuter Rail Project	0	5,883,198	5,883,198	
TX	Austin Capital Metro Light Rail Project	0	990,644	990,644	
TX	Dallas Southeast Corridor Light Rail Project	0	997,800	997,800	
TX	Houston-Advanced Transit Program	2,943,236	2,476,608	5,419,844	d/
TX	Houston Regional Bus Project	0	10,649,414	10,649,414	
VA	Dulles Corridor Project	9,400,368	49,532,158	58,932,526	
VT	Burlington-Bennington (ABRB) Commuter Rail Project	0	1,981,286	1,981,286	
WA	Seattle Central Link Light Rail Project	0	49,532,158	49,532,158	
WA	Spokane-South Valley Corridor Light Rail Project	0	3,962,572	3,962,572	
WI	Kenosha-Racine-Milwaukee Commuter Rail Project	981,079	3,962,572	4,943,651	
	TOTAL UNOBLIGATED ALLOCATION	$127,863,088	$403,479,674	$531,342,762	

Fiscal Years 1998 and 1999 Allocations Extended in Conference Report 107-308

NM	*Albuquerque, NM Light Rail Project*	*$2,954,765*	
OH	*Cleveland-Berea, OH Red Line*	*992,550*	
PA	*Philadelphia-Reading, PA-SEPTA Schuylkill Valley Metro*	*2,977,660*	
VT	*Burlington-Essex Junction Commuter Rail*	*2,883,828*	
VT	*Burlington-Essex Junction Commuter Rail*	*1,985,100*	
	Total Extended Allocations	*$11,793,903*	*e/*

a/ Language in Public Law 106-346 directs that funds remaining unobligated or deobligated for the Miami Metro-Dade Transit east-west multimodal corridor project and the Miami Metro-Dade North 27th Avenue corridor project, as of or after September 30, 2000, are to be made available for the South Miami-Dade Busway Extension.

b/ The provision at Section 323 of the FY 2002 DOT Appropriations Act amends Public Law 105-178, Section 3030(b) to authorize alternative analysis preliminary engineering.

c/ The provision at Section 351 of the FY 2002 DOT Appropriations Act allows all public and private non-federal contributions made on or after January 1, 2000, to be used to meet the non-federal share requirement of any element or phase of this project.

d/ The provision at Section 333 of the FY 2002 DOT Appropriations Act prohibits funds for design or construction of a light rail system in Houston, Texas. Available funds are allowed to be obligated under certain conditions for a Houston, Texas metro advanced transit plan project..

e/ Period of availability for funds extended in FY 2002 Appropriations Act is one additional year and they will lapse September 30, 2002. Projects extended in the FY 2002 Conference Report whose funds were obligated as of September 30, 2001 are not listed.

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
AK	City of Wasilla bus facility	$594,017
AK	Fairbanks buses and bus facility	1,485,044
AK	Fairbanks intermodal facility	2,178,064
AK	Mat-su Community Transit buses and facilities	1,386,041
AK	Port of Anchorage intermodal facility	2,920,586
AK	Port McKenzie buses and bus facilities	1,485,044
AK	Seward intermodal facility	2,772,081
AL	Alabama A&M buses and bus facilities	495,015
AL	Alabama State Dock intermodal passenger and freight terminal	4,950,145
AL	Alabama-Tombigbee Regional Commission buses and vans	445,513
AL	Birmingham-Jefferson County Transit Authority buses	1,980,058
AL	Gadsden Transportation Services	247,507
AL	Huntsville Public Transit intermodel facility	990,029
AL	Montgomery Union Station/Moulton St. intermodal facility and parking	2,970,087
AL	University of North Alabama transit projects	1,980,058
AL	University of South Alabama	2,475,073
AR	Statewide buses and bus facilities for urban, rural, elderly and disabled agencies	4,950,145
AZ	City of Glendale buses	173,255
AZ	Phoenix Regional Public Transportation Authority buses and bus facilities	6,583,693
AZ	Sun Tran CNG replacement buses and facilities	1,732,551
AZ	Tucson intermodal center	2,772,081
CA	AC Transit	495,015
CA	Anaheim Resort transit project	495,015
CA	Antelope Valley transit authority bus facilities	495,015
CA	Belle Vista park and ride	247,507
CA	Boyle Heights bus facility	346,510
CA	City of Burbank shuttle buses	396,012
CA	City of Calabasas CNG smart shuttle	297,009
CA	City of Carpinteria electric-gasoline hybrid bus	495,015
CA	City of Commerce CNG buses and bus facilities	990,029
CA	City of Fresno buses	742,522
CA	City of Monrovia natural gas vehicle fueling facility	267,308
CA	City of Sierra Madre bus replacement	148,504
CA	City of Visalia transit center	2,475,073
CA	Contra Costa Connection buses	346,510
CA	Costa Mesa CNG facility	247,507
CA	County of Amador bus replacement	117,813
CA	County of Calaveras bus fleet replacement	103,953
CA	County of El Dorado bus fleet expansion	470,264
CA	Davis, Sacramento hydrogen bus technology	891,026
CA	El Garces train/intermodal station	1,485,044
CA	Folsom railroad block project	594,017
CA	Foothill Transit, CNG buses and bus facilities	1,237,536
CA	Glendale Beeline CNG buses	297,009
CA	Imperial Valley CNG bus maintenance facility	247,507
CA	Livermore Amador Valley Transit Authority buses and facility	1,485,044
CA	Livermore park and ride	247,507
CA	Los Angeles Metro Transportation Authority rapid buses and bus facilities	3,465,102
CA	Merced County Transit CNG buses	297,009
CA	City of Modesto, bus facilities	198,006
CA	Monterey-Salinas Transit facility	1,485,044
CA	Morongo Basin Transit maintenance and administration facility	990,029
CA	MUNI Central Control Facility	990,029
CA	Municipal Transit Operators Coalition	1,980,058
CA	North Ukiah Transit Center	297,009
CA	Orange County buses	297,009
CA	Palmdale Transportation Center	247,507
CA	Palo Alto intermodal transit center	247,507
CA	Pasadena Area Rapid Transit System	396,012

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
CA	Placer County, CNG bus project	990,029
CA	Sacramento Regional buses and bus facilities	990,029
CA	Sam Trans zero-emissions fuel cell buses	990,029
CA	San Bernardino CNG/LNG buses	371,261
CA	San Dieguito Transportation Cooperative	297,009
CA	San Francisco Municipal buses and bus facilities	3,960,116
CA	San Joaquin Regional Transit District Bus facility	495,015
CA	San Mateo County Transit Districts clean fuel buses	1,485,044
CA	Santa Ana bus base	1,237,536
CA	Santa Barbara hybrid bus rapid transit project	1,980,058
CA	Santa Clara Valley Transportation Authority line 22 articulated buses	594,017
CA	Santa Fe Springs CNG bus replacement	495,015
CA	Sierra Madre Villa & Chinatown intermodal transportation centers	2,970,087
CA	Solano Beach intermodal transit station	495,015
CA	Sonoma County landfill gas conversion facility	495,015
CA	South Pasadena circulator bus	297,009
CA	Sun Line Transit hydrogen refueling station	495,015
CA	Transportation Hub at the Village of Indian Hills	990,029
CA	Yolo County, CNG buses	990,029
CO	Statewide buses and bus facilities	7,672,725
CT	Bridgeport intermodal corridor project	5,197,652
CT	East Haddam transportation vehicles and transit facilities	415,812
CT	Greater New Haven Transit District CNG vehicle project (ConnDOT)	990,029
CT	Hartford-New Britain bus rapid transitway	8,910,261
CT	New Haven bus facility	495,015
DC	Washington Metropolitan Area Transit Authority buses	2,970,087
DC	Fuel cell buses and bus facilities (TEA21)	4,801,641
DE	Statewide buses and bus facilities, Delaware	4,356,128
DE	Wrangle Hill buses and maintenance facility	2,970,087
FL	Broward County alternative vehicle mass transit buses and bus facilities	2,475,073
FL	Central Florida Regional Transportation Authority (LYNX) bus and bus facilities	1,980,058
FL	Duval County/JTA community transportation coordinator program, paratransit vehicles & equipment	990,029
FL	Gainesville Regional Transit System, buses	495,015
FL	Hillsborough Area Transit Authority buses and bus facilities	1,980,058
FL	Jacksonville Transit Authority buses	742,522
FL	Lakeland Citrus connection buses and bus facilities	742,522
FL	Miami Beach development electrowave shuttle service	2,970,087
FL	Miami-Dade bus fleet	1,980,058
FL	Northeast Miami-Dade passenger center	371,261
FL	Palm Tran buses	495,015
FL	Pinellas Suncoast Transit buses, trolleys, and information technology	3,960,116
FL	South Florida Regional Transit buses and bus facilities	3,960,116
FL	South Miami intermodal pedestrian access project	990,029
FL	Tallahassee bus facilities	396,012
FL	TALTRAN intermodal center	594,017
FL	Tri-Rail Cypress Creek intermodal facilities	495,015
FL	VOTRAN buses	2,722,580
FL	Winter Haven Area Transit bus and bus facilities	742,522
GA	Atlanta, Metro Atlanta Rapid Transit Authority clean fuel buses	5,940,174
GA	Chatham Area Transit buses and bus facilities	3,564,104
GA	Cobb County Community Transit bus facilities	990,029
GA	Georgia Department of Transportation replacement buses	990,029
GA	Georgia Regional Transit Authority express bus program	5,940,174
GA	Gwinnett County operations and maintenance facility	495,015
GA	Macon terminal intermodal station	1,485,044
HI	Honolulu buses and bus facilities	7,920,232
HI	Middle Street Transit Center	742,522

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
IA	Cedar Rapids intermodal facility	4,583,834
IA	Statewide bus replacement	4,950,145
ID	Statewide buses, bus facilities, and equipment	3,465,102
IL	Statewide buses and bus facilities	9,335,974
IN	Cherry Street Project multi-modal facility	1,287,038
IN	Indiana bus consortium, buses and bus facilities	3,960,116
IN	Indianapolis downtown transit facility	3,143,342
IN	South Bend Public Transit bus fleet replacement	2,475,073
IN	West Lafayette Transit Project buses and bus facilities	1,732,551
KS	Fort Scott Public Transit buses and bus facilities	297,009
KS	Kansas City Area Transit Authority buses	1,485,044
KS	Statewide buses and bus facilities, Kansas	2,970,087
KS	Topeka Transit transfer center	594,017
KS	Wichita Transit Authority buses	898,946
KY	City of Frankfort transit program buses	95,043
KY	City of Maysville buses	134,644
KY	Leslie County parking structure	1,980,058
KY	Murray-Calloway Transit Authority bus facility	198,006
KY	Pikeville parking and transit facility	4,950,145
KY	Statewide buses and bus facilities	990,029
KY	Audubon Area Community Services buses, vans, cutaways, and bus facilities	198,006
KY	Bluegrass Community Action Services buses, vans, cutaways and bus facilites	594,017
KY	Central Kentucky Community Action Council buses, vans, cutaways and bus facilities	269,288
KY	Community Action Council of Fayette and Lexington buses, vans, cutaways and bus facilities	45,541
KY	Community Action Council of Southern Kentucky buses, vans, cutaways and bus facilities	198,006
KY	Kentucky River Foothills buses, vans, cutaways and bus facilities	134,644
KY	Lake Cumberland Community services buses, vans, cutaways and bus facilities	79,202
KY	Southern and Eastern Kentucky transit vehicles	1,980,058
KY	Transit Authority of Northern Kentucky	1,485,044
KY	Transit Authority of River City buses and bus facilities	1,980,058
LA	Louisiana Public Transit Association buses and bus facilities	
LA	Baton Rouge bus and bus related facilities	658,369
LA	Jefferson Parish bus and bus related facilities	1,321,689
LA	Lafayette bus and bus related facilities	2,240,436
LA	Lake Charles bus and bus related facilities	396,012
LA	Louisiana Department of Transportation bus and bus related facilities	1,183,085
LA	Monroe bus and bus related facilities	529,666
LA	New Orleans bus and bus related facilities	5,140,231
LA	Shreveport bus and bus related facilities	1,450,393
LA	Louisiana State University Health Sciences Center-Shreveport, intermodal parking facility	990,029
LA	St. Bernard Parish intermodal facility	990,029
LA	St. Tammany Parish park and ride	445,513
MA	Attleboro intermodal facilities	990,029
MA	Berkshire Regional Transit Authority buses	742,522
MA	Brockton Intermodal transit center	990,029
MA	Gallagher Intermodal Transportation bus hub and CNG trolleys	990,029
MA	Holyoke Pulse Center	742,522
MA	Merrimack Valley Regional Transit Authority (Amesbury) buses and bus facilities	495,015
MA	Merrimack Valley Regional Transit Authority (Lawrence) buses and bus facilities	495,015
MA	MetroWest buses and bus facilities	495,015
MA	Montachusett intermodal facilities and parking in Fitchburg/N. Leominster	2,475,073
MA	Montachusett Regional Transit Authority bus facilities	99,003
MA	Salem/Beverly Intermodal Center	495,015
MA	Springfield Union Station intermodal facility	3,960,116
ME	Auburn intermodal facility and parking garage	247,507
ME	Statewide buses	2,970,087

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
MD	Statewide buses and bus facilities	8,415,247
MI	Alger County Public Transit	198,006
MI	Antrium County Transportation buses	85,142
MI	Barry County Transit buses	73,262
MI	Bay Area Transit Authority	247,507
MI	Berrien County Department of Planning and Public Works buses	198,006
MI	Blue Water Area Transportation Commission bus facilities	1,485,044
MI	Capital Area Transportation Authority buses, bus facilities, and equipment	2,227,565
MI	Charlevoix County Public Transit	123,754
MI	City of Niles buses and bus facilities	41,581
MI	Crawford County Transportation Authority buses	173,255
MI	Delta County Transit Authority	59,402
MI	Detroit Department of Transportation bus replacement	5,692,667
MI	Eastern UP Transportation Authority	99,003
MI	Flint Mass Transportation Authority replacement buses and vans	1,039,530
MI	Greater Lapeer Transportation Authority bus and bus facilities	346,510
MI	Harbor Transit bus and bus facilities	198,006
MI	Interurban Transit Authority buses	81,182
MI	Interurban Transit Partnership surface transportation center (Grand Rapids)	4,950,145
MI	Ionia Area Transportation Dial-a-Ride	281,168
MI	Isabelia County facilities and equipment	224,737
MI	Kalamazoo County Care-A-Van buses and equipment	128,704
MI	Kalkaska Public Transit buses	247,507
MI	Livingston Essential Transportation Service buses and equipment	244,537
MI	Ludington Transit Facility	495,015
MI	Marquette County Transit Authority buses and bus facility	990,029
MI	Midland County buses	297,009
MI	Milan Public Transit buses	99,003
MI	Muskegon Area Transit System facility	1,633,548
MI	Northern Oakland Transportation Authority	148,504
MI	Otsego County Public Transit	297,009
MI	Sault Ste. Marie dial-a-ride	87,123
MI	Statewide buses and bus facilities	1,980,058
MI	Suburban Mobility Authority for Regional Transportation buses	2,088,961
MI	Van Buren County Public Transit buses	198,996
MN	Duluth Transit Authority buses, bus facilities, and equipment	495,015
MN	Grand Rapids/Gilbert buses and bus facilities	207,906
MN	Greater Minnesota Transit Authority bus, paratransit and transit hub (MNDOT)	3,712,609
MN	Metro transit buses and bus facilities (Twin Cities)	13,365,392
MN	Moorhead buses, bus facilities, and equipment	99,003
MN	Mower County Public Transit Initiative facility	495,015
MN	Rush Line Corridor buses and bus facilities	495,015
MN	St. Cloud buses, bus facilities, and equipment	1,485,044
MS	Brookhaven multi-modal facility	990,029
MS	Harrison county multi-modal facilities and shuttle service	3,960,116
MS	Hattiesburg intermodal facility	3,465,102
MS	Jackson multi-modal transportation center	1,980,058
MO	Cab Care paratransit facility	495,015
MO	Kansas City Area Transit Authority buses and radio equipment	4,455,131
MO	Kansas City bus rapid transit	2,475,073
MO	Missouri Pacific Depot	495,015
MO	OATS buses and bus facilities	1,980,058
MO	Southeast Missouri State, Dunklin, Mississippi, Scott, Stoddard, and Cape Giradeau Counties buses and facilities	1,732,551
MO	Southwest Missouri State University intermodal transfer facility	2,475,073
MO	St. Louis Bi-State Development Authority buses and facilities	3,960,116
MT	Billings Logan international airport bus terminal and facility	1,485,044
MT	Butte-Silver Bow bus facility	495,015
MT	Statewide bus and bus facilities	990,029

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
MT	Area II agency on aging bus facility	544,516
MT	Ravalli County Council on aging bus facility	594,017
NE	Buffalo County buses and maintenance facility	99,003
NV	Las Vegas Boulevard North Corridor BRT, clean diesel-electric buses	1,732,551
NV	Regional Transport Commission of Southern Nevada bus rapid transit	4,455,131
NV	Reno Bus Rapid Transit high-capacity articulated buses	1,485,044
NV	Reno/Sparks buses and bus facilities	3,960,116
NV	Reno Suburban transit coaches	495,015
NH	Granite State Clean Cities Coalition CNG buses and facilities	990,029
NH	Town of Ossipee multimodal visitor center	1,584,046
NJ	Bergen intermodal stations, park and ride and shuttle service	2,326,568
NJ	Middlesex County jitney transit buses	396,012
NJ	Trenton Rail Station rehabilitation	2,475,073
NM	Albuquerque Alvarado Transportation Center (phase II)	1,485,044
NM	Albuqerque buses and paratransit vehicles	495,015
NM	Las Cruces buses	495,015
NM	Las Cruces intermodal transit facility	1,980,058
NM	Santa Fe buses and bus facilities	990,029
NM	Statewide buses and bus facilities	990,029
NM	Village of Taos Ski Valley bus and bus facilities	495,015
NM	West Side Transit facility and buses	3,712,609
NY	Binghamton intermodal terminal	1,980,058
NY	Central New York Regional Transportation Authority	3,217,594
NY	Greater Glens Falls Transit bus facility renovation	495,015
NY	Long Island Rail Road Jamaica intermodal facilities	2,970,087
NY	Martin Street Station	321,759
NY	MTA Long Island buses	1,980,058
NY	Nassau University Medical Center bus service extension	990,029
NY	New Rochelle intermodal center	1,485,044
NY	New York City Dept. of Transportation, CNG buses and facilities	2,475,073
NY	Niagara Frontier Transportation Authority buses	2,475,073
NY	Pelham trolley	257,408
NY	Poughkeepsie intermodal project	990,029
NY	Rochester buses and facilities	990,029
NY	Saratoga Springs intermodal station	1,881,055
NY	Station Plaza commuter parking lot	495,015
NY	Sullivan County Coordinated Public Transportation Service bus facility	495,015
NY	Tompkins Consolidated Area transit center	617,778
NY	Tompkins County replacement buses	1,485,044
NY	Union Station--Oneida County facilities	1,237,536
NY	Westchester County Bee-Line low emission buses	1,485,044
NC	Statewide buses and bus facilities	6,930,203
ND	Statewide buses and bus facilities, and rural transit vehicles	3,465,102
OH	Butler County transit facility	990,029
OH	Dayton, Wright-Dunbar Transit Access Project	2,722,580
OH	Alliance intermodal facility	990,029
OH	Statewide buses and bus facilities, Ohio	8,712,255
OK	Central Oklahoma transit facilities	3,960,116
OK	Oklahoma Department of Transportation transit program buses and bus facilities	2,970,087
OR	Canby Transit buses	198,006
OR	Clackamas County south corridor transit improvements	3,712,609
OR	Fort Clatsop Shuttling system	1,980,058
OR	Lincoln County transportation service district bus garage	74,252
OR	Milwaukee Transit Center	198,006
OR	Rogue Valley Transit District, CNG buses	841,525

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
OR	Salem Area Mass Transit, CNG buses	990,029
OR	Springfield bus transfer station	1,980,058
OR	Tillamook County Transportation District bus facilities	346,510
OR	Wasco County buses (Mid-Columbia Council of Governments)	103,953
PA	Altoona bus facility (TEA-21)	2,970,087
PA	Allentown intermodal transportation center	495,015
PA	Area Transit Authority of North Central PA buses and bus facilities	990,029
PA	Berks Area Reading Transportation Authority buses and bus facilities	2,772,081
PA	Bucks County intermodal facility improvement	742,522
PA	Butler Township multi-modal transfer center	495,015
PA	Callowhill bus garage replacement	3,267,096
PA	Cambria County operations and maintenance facility	742,522
PA	Centre Area Transportation Authority CNG buses	792,023
PA	County of Lackawanna Transit bus facility	495,015
PA	Doylestown Area Regional Transit buses	99,003
PA	Endless Mountain Transportation Authority buses and bus facilities	346,510
PA	Fayette County Transit facility	990,029
PA	Hershey intermodal transportation center	1,237,536
PA	Indiana County Transit Authority buses and bus facilities	495,015
PA	LeHigh and Northampton Transportation Authority bus facility	495,015
PA	Luzerne County Transit Authority buses	297,009
PA	Mid Mon Valley Transit Authority buses and bus facilities	247,507
PA	Mid-County Transit Authority buses and bus facilities	297,009
PA	Monroe County Transit Authority park and ride	594,017
PA	Montgomery County intermodal facility	990,029
PA	Port Authority of Allegheny buses	2,227,565
PA	Red Rose transit transfer center	495,015
PA	Schuylkill Transportation System	396,012
PA	Southeastern Pennsylvania Transportation Authority trackless trolleys	990,029
PA	Somerset County Transpiration System buses	247,507
PA	Wilkes-Barre Intermodal facility	990,029
PA	York County bus replacement	990,029
RI	Providence transportation information center	1,485,044
RI	Statewide buses and bus facilities, Rhode Island	4,455,131
SC	Statewide buses and bus facility	9,900,290
SD	Aberdeen Ride Line buses	99,003
SD	Mobridge Senior Citizen handicap-accessible vehicles	59,402
SD	Oglala Sioux Tribe buses and bus facilities	2,227,565
SD	Rosebud Sioux Tribe transportation vans	54,452
TN	Memphis International Airport intermodal facility	1,722,650
TN	Statewide buses and bus facilities	9,900,290
TX	Abilene bus replacement	495,015
TX	Austin Metrobus	742,522
TX	Brazos Transit ADA compliant buses	396,012
TX	Brazos Transit buses for Texas A & M University	742,522
TX	Brazos Transit buses, intermodal facility, and parking facility	742,522
TX	Brazos Transit park and ride facility	396,012
TX	Brownsville multimodal facility study	99,003
TX	Capital Metro park and ride	495,015
TX	City of Huntsville buses	495,015
TX	Connection Capital Project for Community Transit Facilities	247,507
TX	El Paso buses	495,015
TX	Fort Worth Transportation Authority CNG buses	1,237,536
TX	Fort Worth intermodal center park and ride facility	495,015
TX	Fort Worth 9th Street Transfer Station	1,584,046
TX	Houston Barker Cypress park and ride	4,950,145
TX	Houston Main Street Corridor master plan	495,015
TX	Liberty County buses	371,261

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

FY 2002 SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	ALLOCATION
TX	San Antonio VIA Metro Transit Authority clean fuel buses	1,732,551
TX	Sun Metro buses and bus facilities	495,015
TX	Texas Tech University buses, park and ride	990,029
TX	Waco Transit maintenance and administration facility	1,633,548
TX	Woodlands District park and ride	495,015
UT	Statewide regional intermodal transportation centers, Utah	2,970,087
UT	Utah Transit Authority and Park City Transit buses	495,015
UT	Utah Transit Authority intermodal terminals	990,029
VA	Colonial Williamsburg CNG buses	990,029
VA	Greater Richmond Transit Downtown Transit Center	990,029
VA	Hampton Roads regional buses	3,465,102
VA	Main Street multi-modal transportation center	2,475,073
VA	Potomac & Rappahannock Transportation Commission buses	2,970,087
VA	Roanoke Area Dial-A-Ride	990,029
VT	Vermont Public Transit alternative fuel/hybrid buses and facility	1,980,058
VI	Virgin Islands Transit (VITRAN) buses	495,015
WA	Bellevue Transportation Center	1,584,046
WA	City of Kent facility/Sound Transit, transit and transit-related facilities	891,026
WA	Everett Transit buses and vans	1,732,551
WA	I-5 Trade Corridor/99th St facility	3,663,107
WA	Issaquah Highlands park and ride	1,980,058
WA	King County Transit Oriented Development Projects	990,029
WA	Mukilteo multi-modal terminal and ferry	1,435,542
WA	Pierce Transit buses, vans, and equipment	2,475,073
WA	Snohomish county transit buses and bus facilities	1,980,058
WA	Spokane Transit Authority, buses and bus facilities	990,029
WA	Sound Transit regional transit hubs	9,405,276
WA	Statewide small transit systems, buses, and bus facilities, Washington	28,711
WA	Clallam Transit buses and bus facilities	435,613
WA	Grays Harbor Transportation buses and bus facilities	918,747
WA	Island Transit buses and bus facilities	625,698
WA	Link Transit buses and bus facilities	332,650
WA	Mason County Transportation Authority buses and bus facilities	381,161
WA	Valley Transit buses and bus facilities	742,522
WV	Huntington Tri-State Authority bus facility	742,522
WV	Morgantown Intermodal parking facility	1,980,058
WV	Statewide buses and bus facilities	3,960,116
WI	Statewide buses, bus facilities, and equipment	13,860,363
WY	Statewide buses and bus facilities	2,475,073
WY	Southern Teton Area Rapid Transit bus facility	495,015
	TOTAL ALLOCATION	$613,751,658

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
FY 2000 Unobligated Allocations		
AK	Anchorage , Intermodal Facility	$4,414,928
AK	Fairbanks, Intermodal rail/bus transfer facility	1,947,190
AK	Juneau, Downtown mass transit facility	1,471,643
AK	Wasilla , Intermodal facility	981,096
AL	Birmingham-Jefferson County, Buses	1,226,369
AL	Dothan Wiregrass, Vehicles and transit facility	484,926
AL	Huntsville, Space and Rocket Center intermodal center	3,433,833
AL	Jefferson/Montevallo, Pedestrian walkway	196,219
AL	Mobile, Waterfront terminal complex	4,905,476
AL	Montgomery, Union Station intermodal center and buses	3,433,833
AL	Wilcox County, Gees Bend Ferry facilities	98,110
CA	Bell, Buses and bus facilities	196,219
CA	Commerce, Buses and bus facilities	353,194
CA	Cudahy, Buses and bus facilities	117,731
CA	Lodi, Multimodal facility	833,931
CA	Los Angeles County, Foothill Transit Buses and HEV vehicles	92,736
CA	Maywood, Buses and bus facilities	117,731
CA	Norwalk, I-5 Corridor Intermodal transit centers	1,226,369
CA	Redlands, trolley project	784,876
CA	San Bernardino, train station	2,943,286
CA	Santa Clarita , Bus maintenance facility	1,226,369
CA	Santa Clarita , Bus maintenance facility	741,525
CA	Santa Cruz, Buses and bus facilities	1,721,822
CA	Santa Maria Valley/Santa Barbara County, Buses	235,463
CA	Westminster, senior citizen vans	147,164
CO	Colorado, Buses and bus facilities	1,044,588
DC	Georgetown University, Fuel Cell bus and bus facilities program	123,716
DC	Washington, D.C., Intermodal Transportation Center, District	2,452,738
FL	Miami Beach, electric shuttle service	735,821
GA	Chatham, Area Transit bus transfer center and buses	3,433,833
GA	Georgia, Regional Transportation Authority buses	1,962,190
HI	Hawaii , buses and bus facilities	1,000,000
IA	Cedar Rapids, intermodal facility	3,276,857
IA	Fort Dodge, Intermodal Facility (Phase II)	60,148
IL	East Moline transit center	637,712
IL	Illinois statewide buses and bus-related equipment	866,492
IN	Gary, Transit Consortium buses	306,593
KS	Girard, buses and vans	686,767
KS	Girard Southeast Kansas Community Action Agency maintenance facility	470,926
LA	Baton Rouge, buses and bus-related facilities	294,329
LA	Jefferson Parish, buses and bus-related facilities	44,149
LA	Monroe, buses and bus-related facilities	284,518
MA	Greenfield Montague, buses	490,547
MA	Merrimack Valley Regional Transit Authority bus facilities	458,662
MA	Pittsfield intermodal center	3,531,943
MA	Swampscott, buses	63,772
MN	Greater Minnesota transit authorities	125,000
MN	Northstar Corridor, Intermodal facilities and buses	916,091

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
MO	Jackson County buses and bus facilities	220,576
MO	Southeast Missouri transportation service rural, elderly, disabled service	661,569
MO	Southwest Missouri State University park and ride facility	981,096
MO	St. Louis, Bi-state Intermodal Center	1,226,369
MS	Harrison County multimodal center	2,943,286
MS	North Delta planning and development district, buses and bus facilities	1,177,314
ND	North Dakota statewide bus and bus facilities	208,057
NH	New Hampshire statewide transit systems	2,943,286
NJ	New Jersey Transit alternative fuel buses	4,905,476
NJ	New Jersey Transit jitney shuttle buses	1,716,916
NJ	Newark intermodal and arena access improvements	1,618,807
NJ	Newark, Morris & Essex Station access and buses	1,226,369
NJ	South Amboy, Regional Intermodal Transportation Initiative	1,226,369
NM	Las Cruces buses and bus facilities	279,321
NM	*Northern New Mexico park and ride facilities and State of New Mexico, Buses and Bus-Related Facilities*	*2,698,012 a/*
NV	Lake Tahoe CNG buses	686,767
NV	Washoe County transit improvements	25,661
NY	Buffalo, Auditorium Intermodal Center	1,962,190
NY	Ithaca intermodal transportation center	1,103,732
NY	Putnam County, vans	461,115
OK	Oklahoma statewide bus facilities and buses	231,250
OR	Lincoln County Transit District buses	245,274
OR	South Metro Area Rapid Transit (SMART) maintenance facility	196,219
PA	City of Johnstown, intermodal facilities and buses	800,000
PA	Fayette County, intermodal facilities and buses	445,991
PA	Philadelphia, Intermodal 30th Street Station	1,226,369
PA	Somerset County bus facilities and buses	171,691
PA	Towamencin Township, Intermodal Bus Transportation Center	1,471,643
PA	Washington County intermodal facilities, bus and bus related facilities	618,089
PA	Wilkes-Barre, Intermodal Facility	1,226,369
SC	Central Midlands COG/Columbia transit system	769,210
SC	Florence, Pee Dee buses and facilities	882,986
SC	Greenville transit authority	490,547
SC	Santee-Wateree regional transportation authority	392,438
SC	South Carolina Statewide Virtual Transit Enterprise	1,196,936
SC	Transit Management of Spartanburg, Incorporated (SPARTA)	588,657
SD	South Dakota statewide bus facilities and buses	1,471,643
TN	*Southern Coalition for Advanced Transportation (SCAT) (TN, GA, FL, AL)*	*3,433,833 b/*
VA	Alexandria, bus maintenance facility	490,548
VA	Alexandria, Transit Center	981,096
VA	Fair Lakes League	196,219
VA	Northern Virginia, Dulles Corridor Park-and-Ride Express Bus Program	1,962,190
VA	Richmond, GRTC bus maintenance facility	1,226,369
VT	Burlington multimodal center	2,648,955
VT	Essex Junction multimodal station rehabilitation	490,547
VT	*Marble Valley Regional Transit District buses*	*245,274 c/*
WA	Grant County, Grant Transit Authority	490,547
WA	Grays Harbor County, buses and equipment	1,226,369
WA	King County Metro Atlantic and Central buses	1,471,643
WA	King County park and ride expansion	1,324,478

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
WA	Pierce County Transit buses and bus facilities	305,606
WA	Sequim, Clallam Transit multimodal center	981,096
WA	Spokane, HEV buses	1,471,643
WV	Parkersburg, intermodal transportation facility	4,414,928
WV	West Virginia Statewide Intermodal facility and buses	573,038
	Subtotal FY 2000 Unobligated Allocations	*$121,231,410*
FY 2001 Unobligated Allocations		
AK	Alaska State Fair park and ride and passenger shuttle system	$990,315
AK	Denali Depot intermodal facility	2,970,945
AK	Fairbanks Bus/Rail Intermodal Facility	3,069,976
AK	Homer Alaska Maritime Wildlife Refuge intermodal and welcome center	841,768
AK	Port McKenzie intermodal facilities	7,427,361
AK	Ship Creek pedestrian and bus facilities and intermodal center/parking garage	4,951,574
AL	Statewide, bus and bus facilities	1,435,956
AL	Birmingham-Jefferson County Transit Authority buses and bus facilities	990,315
AL	University of Alabama Birmingham fuel cell bus	1,980,630
AL	Dothan-Wiregrass Transit Authority buses and bus facilities	742,736
AL	Alabama A&M University buses and bus facilities	498,900
AL	Huntsville International Airport intermodal center	4,951,574
AL	Huntsville Space and Rocket Center intermodal center	1,980,630
AL	Lamar County vans	49,516
AL	Lanett, vans	247,579
AL	Alabama State Docks intermodal passenger and freight facility	990,315 d/
AL	Mobile Waterfront Terminal	4,951,574
AL	University of South Alabama, buses and bus facilities	2,475,787
AL	Montgomery - Moulton Street Intermodal Facility	2,970,945
AL	Montgomery, civil rights trail trolleys	247,579
AL	University of North Alabama, bus and bus facilities	1,980,630
AL	Shelby County, vans	198,063
AL	Tuscaloosa interdisciplinary science building parking and intermodal facility	9,407,991
AR	Central Arkansas Transit Authority, bus and bus facilities	1,044,782
AR	Nevada County, vans and mini-vans	89,128
AR	Pine Bluff, buses	287,192
AR	River Market and College Station Livable Communities Program	1,089,346
AR	State of Arkansas, small rural and elderly and handicapped transit buses and bus facilities	2,446,221
CA	Anaheim, buses and bus facilities	247,579
CA	Brea, buses	148,547
CA	Calabasas, buses	495,157
CA	Commerce, buses	990,315
CA	Compton, buses and bus-related equipment	247,579
CA	Culver City, buses	742,736
CA	El Dorado, buses	495,157
CA	El Segundo, Douglas Street gap closure and intermodal facility	2,079,661
CA	Folsom, transit stations	1,485,472
CA	Fresno, intermodal facilities	495,157
CA	Humboldt County, buses and bus facilities	495,157
CA	City of Livermore, park and ride facility	495,157
CA	Foothill Transit, buses and bus facilities	2,475,787

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
CA	Municipal Transit Operators Coalition, buses	1,980,630
CA	Marin County, bus facilities	901,186
CA	Modesto, bus facility	247,579
CA	Monrovia, electric shuttles	574,383
CA	Monterey Salinas Transit Authority, buses and bus facilities	495,157
CA	Oceanside, intermodal facility	1,980,630
CA	Sunline transit agency, buses	990,315
CA	Placer County, buses and bus facilities	495,157
CA	Playa Vista, shuttle buses and bus-related equipment and facilities	2,970,945
CA	Redlands, trolley project	792,252
CA	Rialto, intermodal facility	544,673
CA	Riverside County, buses	495,157
CA	Sacramento, buses and bus facilities	990,315
CA	San Bernardino, intermodal facility	1,584,503
CA	San Bernardino, train station	594,189
CA	Santa Barbara County, mini-buses	237,676
CA	Santa Clara Valley Transportation Authority, buses	495,157
CA	Santa Clarita, maintenance facility	1,980,630
CA	Santa Cruz, buses and bus facilities	1,534,988
CA	Sonoma County, buses and bus facilities	990,315
CA	Temecula, bus shelters	198,063
CA	Vista, bus center	297,094
CO	Statewide bus and bus facilities	1,903,456
CT	Bridgeport, intermodal center	4,951,574
CT	Hartford/New Britain busway	742,736
CT	New Haven, trolley cars and related equipment	990,315
CT	New London, parade project transit improvements	1,980,630
CT	Norwich bus terminal and pedestrian access	990,315
CT	Waterbury, bus garage	990,315
DC	Georgetown University fuel cell bus program	4,803,027
FL	Statewide bus and bus facilities (including Tallahassee)	4,852,848
GA	Atlanta, buses and bus facilities	1,980,630
GA	Chatham, buses and bus facilities	1,980,630
GA	Cobb County, buses	1,237,894
GA	Georgia Regional Transit Authority, buses and bus facilities	2,970,945
HI	Honolulu bus and bus facility improvements	5,941,889
IA	Ames maintenance facility	1,188,378
IA	Cedar Rapids intermodal facility	1,188,378
IA	Des Moines park and ride	693,221
IA	Dubuque, buses and bus facilities	246,088
IA	Mason City, bus facility	896,235
IA	Sioux City multimodal ground transportation center	1,980,630
IA	Sioux City Trolley system	693,221
IA	Waterloo, buses and bus facilities	531,799
ID	Statewide, bus and bus facilities	1,284,265
IL	Harvey, intermodal facilities and related equipment	247,579
IL	Statewide, bus and bus facilities	5,941,889
IN	Evansville, buses and bus facilities	1,485,472
IN	Greater Lafayette Public Corporation -- Wabash Landing buses and bus facilities	1,485,472
IN	Gary - Adam Benjamin intermodal center	792,252

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
IN	South Bend, buses	2,970,945
IN	West Lafayette, buses and bus facilities	2,079,661
KS	Kansas City, JOBLINKS	247,579
KS	Kansas Department of Transportation, rural transit buses	2,970,945
KS	Wichita, buses and ITS related equipment	327,102
KS	Wyandotte County, buses	247,579
KY	Audubon Area Community Action	188,160
KY	Hardin County, buses	297,094
KY	Lexington, LexTran, buses and bus facilities	3,466,102
KY	Louisville, bus and bus facilities	2,970,945
KY	Pikeville, transit facility	1,944,630
LA	Alexandria buses and vans	38,615
LA	Baton Rouge buses and bus equipment	49,516
LA	Jefferson Parish buses and bus related facilities	19,806
LA	Lafayette buses and bus related facilities	297,094
LA	Lafayette multi-modal facility	1,237,894
LA	Monroe buses and bus related facilities	133,692
LA	New Orleans bus lease-maintenance	1,495,375
LA	Plaquemines Parish ferry	990,315
LA	Shreveport buses	292,143
LA	St. Bernard Parish intermodal facilities	1,237,894
LA	St. Tammany Parish park and ride	14,854
MA	Attleboro, intermodal facilities	990,315
MA	Berkshire, buses and bus facilities	990,315
MA	Beverly and Salem, intermodal station improvements	594,189
MA	Brockton, intermodal center	990,315
MA	Lowell, transit hub and Hale Street bus maintenance/operations center	1,237,894
MA	Merrimack Valley Regional Transit Authority, bus facility	495,157
MA	Montachusett, bus facilities, Leominster	247,579
MA	Montachusett, intermodal facility, Fitchburg	1,361,683
MA	Springfield, intermodal facility	495,157
MA	Woburn, buses and bus facilities	247,579
MD	Statewide bus and bus facilities	7,476,092
ME	Bangor intermodal transportation center	1,485,472
ME	Statewide, bus, bus facilities and ferries	3,961,259
MI	Detroit, buses and bus facilities	2,970,945
MI	SMART community transit, buses and paratransit vehicles	4,085,048
MI	Flint, buses and bus facilities	495,157
MI	Lapeer, multi-modal transportation facility	49,516
MI	Statewide, buses and bus facilities	260,288
MI	Traverse City, transfer station	990,315
MN	St. Cloud, buses and bus facilities	2,104,419
MO	Southeast Missouri Transportation Service bus and bus facilities	990,315
MO	Southwest Missouri State University, intermodal facility	990,315
MO	OATS buses and vans	1,980,630
MO	State of Missouri bus and bus facilities	618,002
MS	Brookhaven multimodal transportation center	990,315
MS	Harrison County, multimodal center	1,485,472
MS	Picayune multimodal center	643,705
MS	State of Mississippi rural transit vehicles and regional transit centers	2,970,945

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
MT	Great Falls Transit district buses and bus facilities	990,315
MT	Missoula Ravalli Transportation Management Association buses	742,736
MT	Blackfoot Indian Reservation bus facility	495,157
ND	Statewide bus and bus facilities	1,901,404
NE	Missouri River pedestrian crossing - Omaha	3,961,259
NJ	Elizabeth Ferry Project	495,157
NJ	New Jersey Transit alternative fuel buses	3,961,259
NJ	Newark Arena bus improvements	3,961,259
NJ	Trenton, train/intermodal station	4,951,574
NM	Angel Fire bus and bus Facilities	742,736
NM	Carlsbad, intermodal facilities	623,898
NM	Clovis, buses and bus facility	1,609,262
NM	Las Cruces, buses	495,157
NM	Valencia County, transportation station improvements	1,237,894
NV	Clark County bus passenger intermodal facility - Henderson	1,980,630
NV	Lake Tahoe CNG buses and fleet conversion	1,980,630
NV	Reno and Sparks, buses and bus facilities	990,315
NV	Washoe County buses and bus facilities	2,970,945
NY	Buffalo, intermodal facility	495,157
NY	Eastchester, Metro North facilities	247,579
NY	Greenport and Sag Harbor, ferries and vans	59,419
NY	Highbridge pedestrian walkway	99,032
NY	Jamaica, intermodal facilities	247,579
NY	Larchmont, intermodal facility	990,315
NY	Suffolk County, senior and handicapped vans	495,157
NY	Sullivan County, buses, bus facilities, and related equipment	1,237,894
NY	Syracuse, buses	3,144,249
NY	Tompkins County, intermodal facility	618,946
NY	Westchester and Duchess counties, vans	198,063
NY	Westchester County, buses	990,315
OH	Columbus Near East transit center	990,315
OH	Ohio Statewide bus and bus facilities	6,442,845
OK	Oklahoma City bus transfer center	2,475,787
OK	Statewide bus and bus facilities	3,961,259
OK	Metropolitan Tulsa Transit Authority pedestrian and streetscape improvements	2,475,787
OR	Albany bus purchase - Linn-Benton transit system	198,063
OR	Sunset Empire Transit District improvements to Clatsop County Intermodal Facility	792,252
OR	Basin Transit System buses	158,451
OR	Sandy buses	217,870
OR	Columbia County ADA buses	108,935
OR	Coos County buses	69,322
OR	Corvallis Transit System operations facility	257,482
OR	Hood River County bus and bus facility	237,676
OR	Lakeview buses	49,516
OR	Philomath buses	39,613
OR	Redmond, buses and vans	49,516
OR	Rogue Valley buses	950,702
OR	Salem Area Transit District buses	1,485,472
OR	South Clackamas Transportation District bus	89,128
OR	South Corridor Transit Center and park and ride facilities in Clackamas County	1,485,472

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
OR	Union County bus	43,574
OR	Wasco County buses	95,070
PA	Allegheny County, buses	247,579
PA	Altoona bus testing facility	2,970,945
PA	Bethlehem intermodal facility	1,485,472
PA	Bradford County, buses and bus facilities	346,315
PA	Bucks County, intermodal facility improvements	1,237,894
PA	Cambria County Transit Authority, maintenance facilities	742,736
PA	Fayette County, maintenance facilities	495,157
PA	Indiana, maintenance facilities	346,610
PA	Lancaster, buses	990,315
PA	Lycoming County, buses and bus facilities	1,980,630
PA	Monroe County, buses and bus facilities	990,315
PA	Phoenixville, transit related improvements	1,237,894
PA	Somerset County, ITS related equipment	99,032
PA	Wilkes-Barre intermodal transportation center	990,315
PA	Area Transit Authority, ITS related activities	1,782,567
SC	Statewide, buses and bus facilities	6,610,351
TN	*Southern Coalition for Advanced Transportation, buses*	*1,980,630*
TN	Statewide, buses and bus facilities	3,961,259
TX	Brazos Transit District, buses	495,157
TX	Corpus Christi, buses and bus facilities	990,315
TX	Forth Worth, buses and bus facilities	2,970,945
TX	Galveston, buses and bus facilities	247,579
TX	Harris County, buses and bus facilities	1,980,630
TX	Houston Metro, Main Street Transit Corridor improvements	990,315
TX	Lubbock, buses and bus facilities	990,315
TX	Texas Rural Transit Vehicle Fleet Replacement Program	3,961,259
TX	Waco, maintenance facility	1,634,019
VA	Charlottesville bus and bus facilities	978,045
VA	Danville bus replacement	56,727
VA	Fair Lakes League	489,023
VA	Fairfax County Transportation Association of Greater Springfield	489,023
VA	Falls Church Bus Rapid Transit Terminus	978,045
VA	Hampton Roads bus and bus facilities	2,445,113
VA	Jamestown/Yorktown and Williamsburg CNG bus	1,467,067
VA	City of Richmond bus and bus facilities	1,956,090
VA	Springfield station improvements	489,023
VT	Bellows Falls Multimodal	1,485,472
VT	Brattleboro multimodal center	2,475,786
VT	Burlington multimodal transportation center	1,485,472
VT	Chittenden County transportation authority	990,315
VT	Central Vermont Transit Authority buses and bus facilities	1,485,472
VT	Vermont Statewide paratransit	1,485,472
WA	Clallam County, transportation center	495,157
WA	Clark County, intermodal facilities	990,315
WA	Ephrata, buses	435,738
WA	Everett, buses	1,485,472
WA	King County Metro Eastgate Park and Ride	2,970,945
WA	King County Metro transit bus and bus facilities	1,980,630

FEDERAL TRANSIT ADMINISTRATION

TABLE 9A

PRIOR YEAR UNOBLIGATED SECTION 5309 BUS ALLOCATIONS

STATE	PROJECT	UNOBLIGATED ALLOCATION
WA	Renton/Port Quendall transit project	495,157
WA	Richland, bus maintenance facility	990,315
WA	Snohomish County, buses and bus facilities	990,315
WA	Thurston County, bus-related equipment	1,237,894
WV	Statewide buses and bus facilities	1,980,630
WY	Cheyenne transit and operation facility	911,089
	Subtotal FY 2001 Unobligated Allocations	*$356,327,950*
	TOTAL UNOBLIGATED ALLOCATIONS	**$477,559,360**

Fiscal Years 1998 and 1999 Extended Allocations

AL	*Pritchard, bus and bus facilities*	*$496,250*
AL	*Tuscaloosa Intermodal center*	*1,935,375* e/
CA	*Folsom, multimodal center*	*992,500*
DC	*Washington, D.C., intermodal center*	*2,481,250*
MO	*St. Louis, Bi-state intermodal center*	*1,240,625*
NY	*Buffalo, auditorium intermodal center*	*2,977,000*
PA	*Chambersburg, intermodal facility and transit vehicles*	*913,100*
PA	*Fayette County, buses*	*225,475*
PA	*Red Rose, transit bus terminal*	*992,500*
PA	*Somerset County, bus facilities and buses*	*173,688*
PA	*Towamencin Township, intermodal bus transportation center*	*1,488,750*
PA	*Wilkes-Barre, intermodal facility*	*1,465,794*
PA	*Wilkes-Barre, intermodal facility*	*1,240,625*
	Total Extended Allocations	*$16,622,932* f/

a/ The provision at Section 2901(b) of Conference Report 107-48 "Making Supplemental Appropriations for the Fiscal Year Ending September 30, 2001, and for Other Purposes" amended this project by changing the name from "Northern New Mexico Transit Express/Park and Ride buses" to "Northern New Mexico park and ride facilities and State of New Mexico, Buses and Bus Related Facilities".

b/ The provision at Section 368 of the FY 2002 DOT Appropriations Act directs that funds made available to the southern coalition for advanced transportation (SCAT) in the FY 2000 and FY 2001 DOT Appropriations Acts (Pub. L. 106-69 and 106-346) that remain unobligated shall be transferred to Transit Planning and Research and made available to the electric transit vehicle institute (ETVI) in Tennessee for research administered under the provisions of 49 U.S.C. 5312. FTA will transfer these funds during FY 2002.

c/ The provision at Section 372 of the FY 2002 DOT Appropriations Act amended this project by changing the name from "Killington-Sherburne satellite bus facility" to "Marble Valley Regional Transit District Buses".

d/ The provision at Section 361 of the FY 2002 DOT Appropriations Act amends Section 3030(d)(3) of Public Law 105-178 by adding Alabama State Docks intermodal passenger and freight facility to the intermodal centers eligible for funding under section 5309(m)(1)(C) notwithstanding any other provision of law.

e/ Conference Report 107-48 "Making Supplemental Appropriations for the Fiscal Year Ending September 30, 2001, and for Other Purposes" directs that FTA not reallocate funds provided in the FY 1999 DOT Appropriations Act for this project and that the funds are extended for one additional year. Funds for this project will lapse September 30, 2002.

f/ Period of availability for remaining unobligated funds extended one additional year and will lapse September 30, 2002. Projects extended in the FY 2002 Conference Report whose funds were obligated as of September 30, 2001 are not listed.

FEDERAL TRANSIT ADMINISTRATION

TABLE 10

FY 2002 JOB ACCESS AND REVERSE COMMUTE PROGRAM ALLOCATIONS

STATE	PROJECT AND DESCRIPTION	ALLOCATION
AK	Kenai Peninsula Transit Planning, Alaska	$500,000
AK	MASCOT Matanuska, Susitna Valley, Alaska	200,000
AK	Seward Transit Service, Alaska	200,000
AL	Jefferson County, Alabama	2,000,000
AL	Tuscaloosa, Alabama disabilities advocacy program	1,000,000
AR	Central Arkansas Transit Authority	500,000
AZ	Maricopa County, Arizona	1,200,000
CA	AC Transit, California	2,000,000
CA	Del Norte County, California	700,000
CA	Los Angeles, California	2,000,000
CA	Metropolitan Transportation Commission LIFT Program, California	3,000,000
CA	Sacramento, California	2,000,000
CA	Santa Clara County, California	500,000
CT	State of Connecticut	3,500,000
DE	Delaware Department of Transportation	750,000
DC	Community Transportation Association of America	625,000
DC	Georgetown Metro Connection	1,000,000
DC	Washington Area Metropolitan Transit Authority	2,500,000
FL	Jacksonville Transportation Authority's Choice Ride Program	1,000,000
FL	Hillsborough Area Regional Transit, Tampa, Florida	900,000
FL	Palm Beach County, Florida	500,000
FL	State of Florida, Choice Ride program	1,000,000
GA	Atlanta Regional Commission, Georgia	1,000,000
GA	Chatham, Georgia	1,000,000
GA	Macon-Bibb County, Georgia	400,000
ID	State of Idaho	300,000
IA	State of Iowa	1,700,000
IL	Bloomington to Normal, Illinois, Wheels to Work	500,000
IL	DuPage County, Illinois	500,000
IL	Pace, Illinois suburban buses	561,000
IL	Springfield, Illinois Transportation to employment and self-sufficiency	250,000
IN	Indianapolis Public Transportation Corporation, Indiana (Indyflex)	1,000,000
KS	Topeka, Kansas Metropolitan Transit Authority	600,000
KS	Wichita, Kansas Transit	1,450,000
KS	Wyandotte County/Kansas City, Kansas	1,000,000
LA	Baton Rouge, Louisiana Ways to Work	750,000
MA	Northern Tier Dial-A-Ride, Massachusetts	400,000
MA	Southeastern Massachusetts Regional Transit Authority	100,000
MA	Worchester, Massachusetts	400,000
MD	State of Maryland	5,000,000
MI	Flint, Michigan Mass Transportation Authority	1,000,000
MN	Minneapolis/St. Paul, Minnesota	1,000,000
MO	Metropolitan Kansas City, Missouri	1,000,000
MO	Southeast Missouri Council, Missouri	1,200,000
MO	Workforce Investment Board of Southeast Missouri	800,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 10

FY 2002 JOB ACCESS AND REVERSE COMMUTE PROGRAM ALLOCATIONS

STATE	PROJECT AND DESCRIPTION	ALLOCATION
MO	Workforce Investment Board of Southwest Missouri	600,000
NM	New Mexico State Highway and Transportation Department	2,000,000
NM	Santa Fe, New Mexico	630,000
NV	State of Nevada	300,000
NJ	State of New Jersey	3,000,000
NY	Broome County, New York Transit	500,000
NY	Columbia County, New York	100,000
NY	Genessee-Rochester Regional Transportation Authority, New York	400,000
NY	New York Metropolitan Area Transportation Authority	1,000,000
NY	Sullivan County, New York	400,000
NY	Westchester County, New York	1,000,000
NC	Buncombe County, North Carolina	100,000
NC	Charlotte Area Transit, North Carolina	500,000
ND	Oglala Sioux Tribe, North Dakota	150,000
OH	Central Ohio Transit Authority	1,000,000
OH	Ohio Ways to Work	1,500,000
OH	State of Ohio	1,500,000
OK	Oklahoma Transit Association	5,000,000
OR	Salem Area Transit, Oregon	700,000
OR	Tri-Met Region, Oregon	1,800,000
PA	Lancaster County, Pennsylvania	198,000
PA	Lehigh and Northampton Transportation Authority, Pennsylvania	250,000
PA	Pennsylvania Ways to Work Program	1,500,000
PA	Pittsburgh, Pennsylvania	2,000,000
PA	Port Authority of Allegheny County	2,000,000
PA	Red Rose Transit, Pennsylvania	200,000
PA	SEPTA, Philadelphia, Pennsylvania	6,000,000
PA	State of Pennsylvania	1,500,000
RI	State of Rhode Island	2,000,000
TN	Chattanooga, Tennessee	500,000
TN	State of Tennessee	4,500,000
TN	Tennessee small rural systems	1,000,000
TX	Austin, Texas	500,000
TX	Abilene Texas Citilink Program	150,000
TX	Corpus Christi, Texas	550,000
TX	Galveston, Texas	600,000
VA	Charlottesville, Virginia Jefferson Area United Transportation	375,000
VA	Winchester, Virginia	1,000,000
VT	Burlington Community Land Trust/Good New Garage	850,000
WA	State of Washington	3,000,000
WA	WorkFirst Transportation Initiative, State of Washington	3,000,000
WV	State of West Virginia	800,000
WI	State of Wisconsin	5,200,000
	TOTAL ALLOCATIONS	$109,339,000

FEDERAL TRANSIT ADMINISTRATION

Table 11

FY 2002 NATIONAL PLANNING AND RESEARCH PROGRAM ALLOCATIONS

STATE	PROJECT	ALLOCATION
AL	Center for Composites Manufacturing	$900,000
CA	CALSTART (BRT and Mobility.dot.com)	2,500,000
CA	Santa Barbara Electric Transportation Institute	400,000
FL	University of South Florida rapid bus initiative	250,000
GA	Georgia Regional Transportation Authority/Southern California Association of Governments transit trip planning partnership	400,000
MN	Hennepin County community transportation	1,000,000
MO	Missouri Soybean Association biodiesel transit demo	750,000
ND	North Dakota State University transit center for small urban areas	400,000
MI	Southeast Michigan transportation feasibility study	500,000
NY	Long Island, NY City links study	250,000
TN	Electric Vehicle Institute	500,000
VA	Crystal City-Potomac Yard transit alternatives	250,000
WA	Washington State WestStart innovative transit vehicle	2,000,000
WV	West Virginia transit vehicle exhaust emissions evaluation	1,400,000
----	Joblinks	1,000,000
----	Project ACTION (TEA-21)	3,000,000
	TOTAL ALLOCATIONS	$15,500,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 12

TEA-21 AUTHORIZATION LEVELS (GUARANTEED FUNDING ONLY)

APPROPRIATION / PROGRAM	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	TOTAL
Urbanized Area Formula (Section 5307)	$2,298,852,727	$2,548,190,791	$2,772,890,281	$2,997,316,081	$3,220,601,506	$3,445,939,606	$17,283,790,992
Nonurbanized Area Formula (Section 5311)	134,077,934	177,923,658	193,612,968	209,283,168	224,873,743	240,607,643	1,180,379,114
Elderly and Persons with Disabilities (Section 5310)	62,219,389	67,035,601	72,946,801	78,850,801	84,724,801	90,652,801	456,430,194
Clean Fuels Formula Program (Section 5308)	0	50,000,000	50,000,000	50,000,000	50,000,000	50,000,000	250,000,000
Over the Road Bus Accessibility Program	0	2,000,000	3,700,000	4,700,000	6,950,000	6,950,000	24,300,000
Alaska Railroad (Section 5307)	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	29,099,700
Bus and Bus Related (Section 5309)	400,000,000	451,400,000	490,200,000	529,200,000	568,200,000	607,200,000	3,046,200,000
Fixed Guideway Modernization (Section 5309)	800,000,000	902,800,000	980,400,000	1,058,400,000	1,136,400,000	1,214,400,000	6,092,400,000
New Starts (Section 5309)	800,000,000	902,800,000	980,400,000	1,058,400,000	1,136,400,000	1,214,400,000	6,092,400,000
Job Access and Reverse Commute Program	0	50,000,000	75,000,000	100,000,000	125,000,000	150,000,000	500,000,000
Metropolitan Planning (Section 5303)	39,500,000	43,841,600	49,632,000	52,113,600	55,422,400	60,385,600	300,895,200
State Planning & Research (Section 5313(b))	8,250,000	9,158,400	10,368,000	10,886,400	11,577,600	12,614,400	62,854,800
National Planning & Research (Section 5314)	32,750,000	27,500,000	29,500,000	29,500,000	31,500,000	31,500,000	182,250,000
Rural Transit Assistance (Section 5311(b)(2))	4,500,000	5,250,000	5,250,000	5,250,000	5,250,000	5,250,000	30,750,000
Transit Cooperative Research (Section 5313(a))	4,000,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	45,250,000
National Transit Institute (Section 5315)	3,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	23,000,000
University Transportation Centers (Section 5317(b))	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	36,000,000
Administrative Expenses	45,738,000	54,000,000	60,000,000	64,000,000	67,000,000	73,000,000	363,738,000
FEDERAL TRANSIT ADMINISTRATION TOTAL:	$4,643,738,000	$5,315,000,000	$5,797,000,000	$6,271,000,000	$6,747,000,000	$7,226,000,000	$35,999,738,000

– Fiscal Years 1999-2003 funding for the Clean Fuels Program established under TEA-21 equals $100,000,000. $50,000,000 is shown under the Cleans Fuels Program (Section 5308) and $50,000,000 is included under the Bus and Bus Related (Section 5309).

FEDERAL TRANSIT ADMINISTRATION

TABLE 12A

TEA-21 AUTHORIZATION LEVELS (GUARANTEED AND NONGUARANTEED FUNDING)

APPROPRIATION / PROGRAM	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	TOTAL
Urbanized Area Formula (Section 5307)	$2,298,852,727	$2,698,190,791	$2,922,890,281	$3,147,316,081	$3,370,601,506	$3,595,939,606	$18,033,790,992
Nonurbanized Area Formula (Section 5311)	134,077,934	177,923,658	193,612,968	209,283,168	224,873,743	240,607,643	1,180,379,114
Elderly and Persons with Disabilities (Section 5310)	62,219,389	67,035,601	72,946,801	78,850,801	84,724,801	90,652,801	456,430,194
Clean Fuels Formula Program (Section 5308)	0	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000	750,000,000
Over the Road Bus Accessibility Program	0	2,000,000	3,700,000	4,700,000	6,950,000	6,950,000	24,300,000
Alaska Railroad (Section 5307)	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	29,099,700
Bus and Bus Related (Section 5309)	400,000,000	551,400,000	590,200,000	629,200,000	668,200,000	707,200,000	3,546,200,000
Fixed Guideway Modernization (Section 5309)	800,000,000	1,002,800,000	1,080,400,000	1,158,400,000	1,236,400,000	1,314,400,000	6,592,400,000
New Starts (Section 5309)	800,000,000	1,302,800,000	1,390,400,000	1,478,400,000	1,566,400,000	1,644,400,000	8,182,400,000
Job Access and Reverse Commute Program	0	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000	750,000,000
Metropolitan Planning (Section 5303)	39,500,000	70,312,000	76,929,600	80,238,400	84,374,400	90,164,800	441,519,200
State Planning & Research (Section 5313(b))	8,250,000	14,688,000	16,070,400	16,761,600	17,625,600	18,835,200	92,230,800
National Planning & Research (Section 5314)	32,750,000	58,500,000	60,500,000	62,500,000	64,500,000	65,500,000	344,250,000
Rural Transit Assistance (Section 5311(b)(2))	4,500,000	5,250,000	5,250,000	5,250,000	5,250,000	5,250,000	30,750,000
Transit Cooperative Research (Section 5313(a))	4,000,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	45,250,000
National Transit Institute (Section 5315)	3,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	23,000,000
University Transportation Centers (Section 5317(b))	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	36,000,000
Administrative Expenses	45,738,000	67,000,000	74,000,000	80,000,000	84,000,000	91,000,000	441,738,000
TOTAL FUNDING ALL PROGRAMS:	$4,643,738,000	$6,341,000,000	$6,810,000,000	$7,274,000,000	$7,737,000,000	$8,194,000,000	$40,999,738,000

FEDERAL TRANSIT ADMINISTRATION

TABLE 13

FY 2001 APPORTIONMENT FORMULA FOR FORMULA PROGRAM

Percent of Formula Funds Available

Section 5310:	2.4%	States - allocated to states based on state's population of elderly and persons with disabilities
Section 5311:	6.37%	Nonurbanized Areas - allocated to states based on state's nonurbanized area population
Section 5307:	91.23%	Urbanized Areas (UZA)

UZA Population and Weighting Factors

50,000-199,000 in population :
(Apportioned to Governors)

9.32% of available Section 5307 funds
- *50% apportioned based on population*
- *50% apportioned based on population x population density*

200,000 and greater in population:
(Apportioned to UZAs)

90.68% of available Section 5307 funds

33.29% (Fixed Guideway Tier*)

95.61% (Non-incentive Portion of Tier)
- --- at least 0.75% to each UZA with commuter rail and pop. 750,000 or greater
- 60% - fixed guideway revenue vehicle miles
- 40% - fixed guideway route miles

4.39% ("Incentive" Portion of Tier)
- -- at least 0.75% to each UZA with commuter rail and pop. 750,000 or greater
- -- fixed guideway passenger miles x fixed guideway passenger miles/operating cost

66.71% ("Bus" Tier)

90.8% (Non-incentive Portion of Tier)

73.39% for UZAs with population 1,000,000 or greater
- *50% - bus revenue vehicle miles*
- *25% - population*
- *25% - population x population density*

26.61% for UZAs pop. < 1,000,000
- *50% - bus revenue vehicle miles*
- *25% - population*
- *25% - population x density*

9.2% ("Incentive" Portion of Tier)
- -- bus passenger miles x bus passenger miles/operating cost

*Includes all fixed guideway modes, such as heavy rail, commuter rail, light rail, trolleybus, aerial tramway, inclined plane, cable car, automated guideway transit, ferryboats, exclusive busways, and HOV lanes.

FEDERAL TRANSIT ADMINISTRATION

TABLE 14

FY 1998 - 2003 SECTION 5309 FIXED GUIDEWAY MODERNIZATION PROGRAM APPORTIONMENT FORMULA

Tier 1 First $497,700,000 to the following areas:

Baltimore	$	8,372,000
Boston	$	38,948,000
Chicago/N.W. Indiana	$	78,169,000
Cleveland	$	9,509,500
New Orleans	$	1,730,588
New York	$	176,034,461
N. E. New Jersey	$	50,604,653
Philadelphia/So. New Jersey	$	58,924,764
Pittsburgh	$	13,662,463
San Francisco	$	33,989,571
SW Connecticut	$	27,755,000

Tier 2 Next $70,000,000 as follows: Tier 2(A): 50 percent is allocated to areas identified in Tier 1; Tier 2(B): 50 percent is allocated to other urbanized areas with fixed guideway tiers in operation at least seven years. Funds are allocated by the Urbanized Area Formula Program fixed guideway tier formula factors that were used to apportion funds for the fixed guideway modernization program in FY 1997.

Tier 3 Next $5,700,000 as follows: Pittsburgh 61.76%; Cleveland 10.73%; New Orleans 5.79%; and 21.72% is allocated to all other areas in Tier 2(B) by the same fixed guideway tier formula factors used in fiscal year 1997.

Tier 4 Next $186,600,000 as follows: All eligible areas using the same year fixed guideway tier formula factors used in fiscal year 1997.

Tier 5 Next $70,000,000 as follows: 65% to the 11 areas identified in Tier 1, and 35% to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the database.

Tier 6 Next $50,000,000 as follows: 60% to the 11 areas identified in Tier 1, and 40% to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment less than 7 years old in the year of the apportionment will be deleted from the database.

Tier 7 Remaining amounts as follows: 50% to the 11 areas identified in Tier 1, and 50% to all other areas using the most current Urbanized Area Formula Program fixed guideway formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the database.

FEDERAL TRANSIT ADMINISTRATION

TABLE 15

FISCAL YEAR 2002 FORMULA GRANT APPORTIONMENTS - UNIT VALUES OF DATA

		APPORTIONMENT UNIT VALUE
Section 5307 Urbanized Area Formula Program - Bus Tier		
Urbanized Areas Over 1,000,000:		
Population		$3.39155136
Population x Density		$0.00086987
Bus Revenue Vehicle Mile		$0.41804338
Urbanized Areas Under 1,000,000:		
Population		$3.06502342
Population x Density		$0.00134983
Bus Revenue Vehicle Mile		$0.49502152
Bus Incentive (PM denotes Passenger Mile):		
Bus PM x Bus PM = / Operating Cost		$0.00568461
Section 5307 Urbanized Area Formula Program - Fixed Guideway Tier		
Fixed Guideway Revenue Vehicle Mile		$0.57872024
Fixed Guideway Route Mile		$32,394
Commuter Rail Floor	$6,942,181	
Fixed Guideway Incentive:		
Fixed Guideway PM x Fixed Guideway PM = / Operating Cost		$0.00046828
Commuter Rail Incentive Floor	$318,755	
Section 5307 Urbanized Area Formula Program - Areas Under 200,000		
Population		$5.53721696
Population x Density		$0.00276693
Section 5311 Nonurbanized Area Formula Program		
Areas Under 50,000		
Population		$2.45758671

Section 5309 Capital Program - Fixed Guideway Modernization

	Tier 2	Tier 3	Tier 4	Tier 5	Tier 6	Tier 7
Legislatively Specified Areas:						
Revenue Vehicle Mile	$0.03043443	——	$1.13683131	$0.03701143	$0.02440314	$0.09679444
Route Mile	$2,122.43	——	$7,832.52	$2,778.71	$1,832.12	$7,267.05
Other Urbanized Areas:						
Revenue Vehicle Mile	$0.16377360	$0.00579309	$1.13683131	$0.11255332	$0.09188026	$0.54666114
Route Mile	$4,772.78	$168.83	$7,832.52	$3,125.60	$2,551.51	$15,180.74

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Federal Register

Wednesday,
January 2, 2002

Part III

Department of Transportation

Federal Transit Administration

Fiscal Year 2002 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2002 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: This Notice contains FTA's comprehensive compilation of the Federal Fiscal Year 2002 certifications and assurances to be used in connection with all Federal assistance programs FTA administers during Federal Fiscal Year 2002, as required by 49 U.S.C. 5323(n).

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: FTA staff in the appropriate Regional Office listed below. For copies of other related documents, see the FTA Web site at *http://www.fta.dot.gov* or contact the Office of Public Affairs, Federal Transit Administration (202) 366–4019.

Region 1: Boston

States served: Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and Massachusetts Telephone # 617–494–2055.

Region 2: New York

States served: New York, New Jersey, and Virgin Islands Telephone # 212–668–2170.

Region 3: Philadelphia

States served: Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia Telephone # 215–656–7100.

Region 4: Atlanta

States served: Kentucky, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Puerto Rico Telephone # 404–562–3500.

Region 5: Chicago

States served: Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio Telephone # 312–353–2789.

Region 6: Dallas/Ft. Worth

States served: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico Telephone # 817–978–0550.

Region 7: Kansas City

States served: Missouri, Iowa, Kansas, and Nebraska Telephone # 816–329–3920.

Region 8: Denver

States served: Colorado, Utah, Wyoming, Montana, North Dakota, and South Dakota, Telephone # 303–844–3242.

Region 9: San Francisco

States served: California, Hawaii, Guam, Arizona, Nevada, American Samoa, and the Northern Mariana Islands Telephone # 415–744–3133

Region 10: Seattle

States served: Idaho, Oregon, Washington, and Alaska Telephone # 206–220–7954.

SUPPLEMENTARY INFORMATION: Before FTA may award a Federal grant or cooperative agreement, the Applicant must provide to FTA all certifications and assurances pertaining to itself or its project as required by Federal laws and regulations. The requisite certifications and assurances must be submitted to FTA irrespective of whether the project is financed under the authority of 49 U.S.C. chapter 53, or title 23, United States Code, or another Federal statute.

The Applicant's Annual Certifications and Assurances for Federal Fiscal Year 2002 cover all projects for which the Applicant seeks funding during that fiscal year. An Applicant's Annual Certifications and Assurances applicable to a specific grant or cooperative agreement generally remain in effect either for the life of the grant or cooperative agreement to closeout, or for the life of the project or project property when a useful life or industry standard life is in effect, whichever occurs later; except, however, if in a later year, the Applicant provides certifications and assurances that differ from the certifications and assurances previously made, the later certifications and assurances will apply to the grant, cooperative agreement, project, or project property, except as FTA otherwise permits.

Background

Since Federal Fiscal Year 1995, FTA has been consolidating the various certifications and assurances that may be required into a single document. FTA intends to continue publishing this document annually in conjunction with its publication of the FTA annual apportionment Notice, which allocates funds made available by the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act.

Federal Fiscal Year 2002 Changes

The following changes have been made:

(1) In Certification 1.J(18), a reference to the latest OMB A–133 Compliance Supplement provisions for the Department of Transportation, dated March 2001 has been substituted for the previous compliance supplement.

(2) In Certification 10, new FTA regulations, ''Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,'' 49 CFR part 655, replace FTA's former separate drug and alcohol regulations.

(3) A new Intelligent Transportation Systems Program Assurance, (Number 12) has been added to cover the provisions of Section VII of FTA Notice, ''FTA National ITS Architecture Policy on Transit Projects'' 66 FR 1455 *et seq.*, January 8, 2001. Accordingly, former Certifications 12, 13, 14, and 15 have been renumbered 13, 14, 15, and 16.

(4) In Certification 16, a reference to Federal guidance was substituted for the reference to FTA guidelines because it is unlikely that FTA will issue State Infrastructure Bank guidelines.

Text of Federal Fiscal Year 2002 Certifications and Assurances

A detailed compilation of the provisions of the Certifications and Assurances and the Signature Page as set forth in Appendix A of this Notice, also appears in the ''Cert's & Assurances'' tab page of FTA's electronic award and management system. It is important that each Applicant be familiar with all sixteen (16) certification and assurance categories contained in this Notice, as they may be a prerequisite for receiving FTA financial assistance. Provisions of this Notice supersede conflicting statements in any circular containing a previous version of the Annual Certifications and Assurances. The certifications and assurances contained in those circulars are merely examples, and are not acceptable or valid for Federal Fiscal Year 2002; do not rely on the statements within certifications and assurances appearing in circulars.

Significance of Certifications and Assurances

Selecting and submitting certifications and assurances to FTA, either through FTA's electronic award and management system or submission of the Signature Page of Appendix A, signifies the Applicant's intent to comply with the requirements of those certifications and assurances to the extent they apply to a program for which the Applicant submits an application for assistance in Federal Fiscal Year 2002.

Requirement for Attorney's Signature

FTA requires a current (Federal Fiscal Year 2002) attorney's affirmation of the

Applicant's legal authority to certify compliance with the funding obligations in this document. Irrespective of whether the Applicant chooses to make a single selection for all 16 categories or select individual options from the 16 categories, the attorney's signature from a previous year is not acceptable.

Deadline for Submission

All Applicants for FTA capital investment program or formula program assistance, and current grantees with an active project financed with FTA capital investment program or formula program assistance, are expected to provide Federal Fiscal Year 2002 Certifications and Assurances within 90 days from the date of this publication or with its first grant application in Fiscal Year 2002, whichever is first. Other Applicants are encouraged to submit their certifications and assurances as soon as possible.

Preference for Electronic Submission

FTA has expanded the use of the electronic programs for Applicants, first introduced in 1995. FTA expects Applicants registered in FTA's electronic award and management system to submit their applications as well as certifications and assurances electronically through FTA's electronic award and management system. Only if an Applicant is unable to submit its certifications and assurances through FTA's electronic award and management system should the Applicant use the Signature Page form in Appendix A of this Notice.

Procedures for Electronic Submission

The ''Cert's & Assurances'' tab page of FTA's electronic award and management system contain fields for selecting the certifications and assurances to be submitted. Within that tab page are fields for the Applicant's authorized representative and its attorney to enter their personal identification numbers (PINs), and thus ''sign'' the certifications and assurances for electronic transmission to FTA. In certain circumstances, the Applicant may enter its PIN number in lieu of an electronic signature provided by its Attorney, provided the Applicant has on file the Affirmation of its Attorney in writing dated this Federal fiscal year as set forth in Appendix A of this Notice. Applicants may contact the appropriate Regional Office listed in this Notice or the Helpdesk for FTA's electronic award and management system for more information.

Procedures for Paper Submission

The following procedures apply to an Applicant that is unable to submit its certifications electronically. The Applicant must mark the certifications and assurances it is making on the Signature Page form in Appendix A of this Notice and submit it to FTA. The Applicant may signify compliance with all Categories by placing a single mark in the appropriate space at the top of the Signature Selection Page in Appendix A. In certain circumstances, the Applicant may certify in lieu of the signature of its Attorney, provided the Applicant has on file the Affirmation of its Attorney in writing dated this Federal fiscal year as set forth in Appendix A of this Notice. Applicants may contact the appropriate Regional Office listed in this Notice for more information.

References

The Transportation Equity Act for the 21st Century, Pub. L. 105–178, June 9, 1998, as amended by the TEA–21 Restoration Act 105–206, 112 Stat. 685, July 22, 1998, 49 U.S.C. chapter 53, Title 23, United States Code, U.S. DOT and FTA regulations at 49 CFR, and FTA Circulars.

Dated: December 21, 2001.

Jennifer L. Dorn,

Administrator.

BILLING CODE 4910–57–P

Appendix A

Federal Fiscal Year 2002 Certifications and Assurances for Federal Transit Administration Assistance Programs

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) programs. FTA requests each Applicant to provide as many certifications and assurances as needed to cover all programs for which it will seek FTA assistance in Federal Year 2002. FTA strongly encourages the Applicant to submit its certifications and assurances through FTA's electronic award and management system.

The 16 Categories of certifications and assurances are listed by numbers 1 through 16 on the Cert's & Assurances tab page of the FTA electronic award and management system and on the opposite side of the Signature Page at the end of this document. Categories 2 through 16 will apply to some, but not all, applicants. The designation of the 16 categories corresponds to the circumstances mandating submission of specific certifications, assurances, or agreements.

1. Certifications and Assurances Required of Each Applicant

Each Applicant for FTA assistance awarded must provide all certifications and assurances in this Category ''1.'' FTA may not award any Federal assistance until the Applicant provides these certifications and assurances by selecting Category ''1.''

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under state and local law and the by-laws or internal rules of the Applicant organization to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant;

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and

(3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement issued for its project with FTA. The Applicant recognizes that Federal laws, regulations, policies, and administrative practices might be modified from time to time and they may affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

C. Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions

As required by U.S. DOT regulations on Governmentwide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:

(1) The Applicant (Primary Participant) certifies, to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not, within a three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this certification had one or more

public transactions (Federal, state, or local) terminated for cause or default.

(2) The Applicant also certifies that, if it later becomes aware of any information contradicting the statements of paragraph (1) above, it will promptly provide that to FTA.

(3) If the Applicant (Primary Participant) is unable to certify to all statements in paragraphs (1) and (2) of this certification, it shall indicate so in its applications, or in the transmittal letter or message accompanying its annual certifications and assurances, and provide a written explanation to FTA.

D. Drug-Free Workplace Agreement

As required by U.S. DOT regulations, ''Drug-Free Workplace Requirements (Grants),'' 49 CFR part 29, Subpart F, and as modified by 41 U.S.C. 702, the Applicant agrees that it will provide a drug-free workplace by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace and specifying the actions that will be taken against its employees for violation of that prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employee about:

(a) The dangers of drug abuse in the workplace;

(b) Its policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each of its employees to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (1) of this certification;

(4) Notifying each of its employees in the statement required by paragraph (1) of this certification that, as a condition of employment financed with Federal assistance provided by the grant or cooperative agreement, the employee will be required to:

(a) Abide by the terms of the statement; and

(b) Notify the employer (Applicant) in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after that conviction;

(5) Notifying FTA in writing, within ten (10) calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction. The Applicant, as employer of any convicted employee, must provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement;

(6) Taking one of the following actions within thirty (30) calendar days of receiving notice under paragraph (4)(b) of this agreement with respect to any employee who is so convicted:

(a) Taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(b) Requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency; and

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) of this agreement. The Applicant agrees to maintain a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted, and make that list readily accessible to FTA.

E. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance it submits to FTA has been or will be submitted for intergovernmental review to the appropriate state and local agencies in accordance with applicable state requirements. The Applicant also assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, ''Intergovernmental Review of Department of Transportation Programs and Activities,'' 49 CFR part 17.

F. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, ''Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,'' 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, ''Title VI Program Guidelines for Federal Transit Administration Recipients'', and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.

(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.

(4) The Applicant assures that it will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

(5) As required by 49 CFR 21.7(a)(2), the Applicant will include in each third party contract or subagreement provisions to invoke the requirements of 49 U.S.C. 5332 and 49 CFR part 21, and include provisions to invoke those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

G. Disadvantaged Business Enterprise Assurance

In accordance with 49 CFR 26.13(a), the Recipient assures that it shall not discriminate on the basis of race, color, national origin, or sex in the implementation of the project and in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 CFR part 26. The Recipient assures that it shall take all necessary and reasonable steps set forth in 49 CFR part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from the U.S. DOT. The Recipient's DBE program, as required by 49 CFR part 26 and approved by the U.S. DOT, will be incorporated by reference and made part of the grant agreement or cooperative agreement for any Federal assistance awarded by FTA or U.S. DOT. Implementation of this DBE program is a legal obligation of the Recipient, and failure to carry out its terms shall be treated as a violation of the grant agreement or cooperative agreement. Upon notification by the Government to the Recipient of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.*

H. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, ''Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,'' at 49 CFR 27.9, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to

participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.,* and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.* at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

I. Procurement Compliance

The Applicant certifies that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and FTA third party contracting regulations when promulgated, as well as other requirements FTA may issue. The Applicant certifies that it will include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and each contractor will also include in its subagreements and contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

J. Certifications Required by the U.S. Office of Management and Budget (SF–424B and SF–424D)

A required by the U.S. Office of Management and Budget (OMB), the Applicant certifies that it:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in its application;

(2) Will give FTA, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;

(5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, ''Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,'' 49 CFR part 25, which prohibits discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibit discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92–255, March 21, 1972, and amendments thereto, relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L. 91–616, Dec. 31, 1970, and amendments thereto, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd–3 and 290ee–3, related to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing;

(i) Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided including, but not limited to section 1101(b) of the Transportation Equity Act for the 21st Century, 23 U.S.C. 101 note, which provides for participation of disadvantaged business enterprises in FTA programs; and

(j) The requirements of any other nondiscrimination statute(s) that may apply to the project;

(6) Will comply, or has compiled, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal of federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. As required by U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' at 49 CFR 24.4, and sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, the Applicant assures that it has the requisite authority under applicable state and local law and will comply or has complied with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.,* and U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR part 24 including, but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations or associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will participate in the Applicant's eligible costs of providing payments for those expenses as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be found by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;

(7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 276a through 276a(7), the Copeland Act, as amended, 18 U.S.C. 874 and 40 U.S.C. 276c, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 333, regarding labor standards for federally-assisted subagreements;

(8) To the extent applicable, will comply with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring recipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(9) Will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801,

which prohibits the use of lead-based paint in construction or rehabilitation of residence structures;

(10) Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from the awarding agency;

(11) Will record the Federal interest in the title of real property in accordance with FTA directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscriminating during the useful life of the project;

(12) Will comply with FTA requirements concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, ''Seismic Safety,'' 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with 49 CFR part 41 seismic design and construction requirements;

(13) Will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by FTA or the state;

(14) Will comply with environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.* and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved state management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*;

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 *et seq.;*

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300h *et seq.*;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.;* and

(i) Environmental protections for Federal transit programs, including, but not limited to protections for a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance or any land from a historic site of national, state, or local significance used in a transit project as required by 49 U.S.C. 303;

(j) Will comply with the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 *et seq.* relating to protecting components of the national wild and scenic rivers systems; and

(k) Will assist FTA in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note, and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469a–1 *et seq.;*

(15) To the extent applicable, will comply with provisions of the Hatch Act, 5 U.S.C. 1501 through 1508, and 7324 through 7326, which limit the political activities of state and local agencies and their officers and employees whose principal employment activities are financed in whole or part with Federal funds including a Federal loan, grant, or cooperative agreement, but pursuant to 23 U.S.C. 142(g), does not apply to a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act does not otherwise apply;

(16) Will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance and DOT regulations, ''Protection of Human Subjects,'' 49 CFR part 11;

(17) Will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.* pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by FTA assistance;

(18) Will have performed the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.* and OMB Circular No. A–133, ''Audits of States, Local Governments, and Non-Profit Organizations and Department of Transportation provisions of OMB A–133 Compliance Supplement, March 2001''; and

(19) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the project.

2. Lobbying Certification for an Application Exceeding $100,000:

An Applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding $100,000 must provide the following certification. FTA may not award Federal assistance for an application exceeding $100,000 until the Applicant provides this certification by selecting Category ''2.''

A. As required by U.S. DOT regulations, ''New Restrictions on Lobbying,'' at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress pertaining to the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' including the information required by the form's instructions, which may be amended to omit such information as permitted by 31 U.S.C. 1352.

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. Certification pertaining To The Effects of The Project on Private Mass Transportation Companies

A State or local government Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 to acquire the property of or an interest therein of a private mass transportation company or to operate mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company must provide the following certification. FTA may not award Federal assistance for that project until the Applicant provides this certification by selecting Category ''3.''

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires property or an interest in property of a private mass transportation company or operates mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company it has or will have:

A. Found that the assistance is essential to carrying out a program of projects as determined by the plans and programs of the metropolitan planning organization;

B. Provided for the participation of private mass transportation companies to the maximum extent feasible consistent with applicable FTA requirements and policies;

C. Paid just compensation under state or local law to a private mass transportation company for its franchises or property acquired; and

D. Acknowledged that the assistance falls within the labor standards compliance

requirements of 49 U.S.C. 5333(a) and 5333(b).

4. Public Hearing Certification For a Capital Project That Will Substantially Affect A Community or Its Transit Service

An Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or the community's mass transportation service must provide the following certification. FTA may not award Federal assistance for that project until the Applicant provides this certification by selecting Category ''4.''

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, will have:

A. Provided an adequate opportunity for a public hearing with adequate prior notice of the proposed project published in a newspaper of general circulation in the geographic area to be served;

B. Held that hearing and provided FTA a transcript or detailed report summarizing the issues and responses, unless no one with a significant economic, social, or environmental interest requests a hearing;

C. Considered the economic, social, and environmental effects of the project; and

D. Determined that the project is consistent with official plans for developing the urban area.

5. Certification of Pre-Award And Post-Delivery Reviews Required For Acquisition of Rolling Stock

An Applicant seeking FTA assistance to acquire rolling stock must provide the following certification. FTA may not provide assistance to acquire rolling stock until the Applicant provides this certification by selecting Category ''5.''

As required by 49 U.S.C. 5323(m) and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663 when procuring revenue service rolling stock. Among other things, the Applicant agrees to conduct or cause to be conducted the requisite pre-award and post-delivery reviews, and maintain on file the certifications required by 49 CFR part 663, subpart B, C, and D.

6. Bus Testing Certification Required For New Bus Acquisitions

An Applicant seeking FTA assistance to acquire new buses must provide the following certification. FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification by selecting Category ''6.''

As required by FTA regulations, ''Bus Testing,'' at 49 CFR 665.7, the Applicant certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or authorizing final acceptance of that bus (as described in 49 CFR part 665):

A. The model of the bus will have been tested at a bus testing facility approved by FTA; and

B. It will have received a copy of the test report prepared on the bus model.

7. Charter Service Agreement

An Applicant seeking FTA assistance to acquire or operate transportation equipment or facilities financed with Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310) or Title 23, U.S.C. must enter into the following charter service agreement. FTA may not provide assistance for projects authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310) or Title 23, U.S.C. until the Applicant enters into this agreement by selecting Category ''7.''

A. As required by 49 U.S.C. 5323(d) and FTA regulations, ''Charter Service,'' at 49 CFR 604.7, the Applicant agrees that it and its recipients will:

(1) Provide charter service that uses equipment or facilities acquired with Federal assistance authorized for 49 U.S.C. 5307, 5309, or 5311 or Title 23 U.S.C., only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its recipients desire to provide, unless one or more of the exceptions in 49 CFR 604.9 applies; and

(2) Comply with the provisions of 49 CFR part 604 before they provide any charter service using equipment of facilities acquired with Federal assistance authorized for the above statutes.

B. The Applicant understands that the requirements of 49 CFR part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this agreement, and violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

8. School Transportation Agreement

An Applicant seeking FTA assistance to acquire or operate transportation facilities and equipment using Federal assistance authorized by 49 U.S.C. chapter 53 or Title 23, U.S.C. must agree as follows. FTA may not provide assistance for transportation facilities until the Applicant enters into this Agreement by selecting Category ''8.''

A. As required by 49 U.S.C. 5323(f) and FTA regulations, ''School Bus Operation,'' at 49 CFR 605.14, the Applicant agrees that it and all its recipients will:

(1) Engage in school transportation operations in competition with private school transportation operators only to the extent permitted by 49 U.S.C. 5323(f), and implementing regulations; and

(2) Comply with the requirements of 49 CFR part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance awarded by FTA and authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. for transportation projects.

B. The Applicant understands that the requirements of 49 CFR part 605 will apply to any school transportation it provides, the definitions of 49 CFR part 605 apply to this school transportation agreement, and a violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

9. Certification Required for the Direct Award of FTA Assistance to an Applicant for Its Demand Responsive Service

An Applicant seeking direct Federal assistance to support demand responsive service must provide the following certification. FTA may not award Federal assistance directly to an Applicant to support its demand responsive service until the Applicant provides this certification by selecting Category ''9.''

As required by U.S. DOT regulation, ''Transportation Services for Individuals with Disabilities (ADA),'' at 49 CFR 37.77, the Applicant certifies that its demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service offered to persons without disabilities. When viewed in its entirety, the Applicant's service for persons with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

10. Prevention of Alcohol Misuse and Prohibited Drug Use Certification

If the Applicant is required by Federal regulations to provide the following certification concerning its activities to prevent alcohol misuse of prohibited drug use in its transit operations, FTA may not provide Federal assistance to that Applicant until it provides this certification by selecting Category ''10.''

As required by FTA regulations, ''Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,'' at 49 CFR part 665, subpart I, the Applicant certifies that it has established and implemented an anti-drug and alcohol misuse program, and has complied with or will comply with applicable requirements of FTA regulations, ''Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,'' at 49 CFR part 665.

11. Certification Required For Interest or Other Financing Costs

An Applicant that intends to request reimbursement of interest or other financing costs incurred for its capital projects must provide the following certification. FTA may not provide assistance to support those costs until the Applicant provides this certification by selection Category ''11.''

As required by 49 U.S.C. 5307(g), 49 U.S.C. 5309(g)(2)(B), 49 U.S.C. 5309(g)(3)(A), and 49 U.S.C. 5309(n), the Applicant certifies that it will not seek reimbursement for interest and other financing costs until its records demonstrate it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA might require.

12. Intelligent Transportation System Program Assurance

An Applicant for FTA assistance for an Intelligence Transportation System Project (ITS Project), defined as any project that in

whole or in part funds the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the National ITS Architecture,'' must provide the following assurance. FTA may not award any Federal assistance until the Applicant provides this assurance by selecting Category ''12.''

In compliance with Section VII of FTA Notice, ''FTA National ITs Architecture Policy on Transit Projects,'' at 66 FR 1459, January 8, 2001, in the course of implementing an ITS Project, the Applicant assures that it will comply, and require its third party contractors and subrecipients to comply, with all applicable requirements imposed by Section V (Regional ITS Architecture) and Section VI (Project Implementation) of that Notice.

13. Certifications and Assurances For The Urbanized Area Formula Program, The Job Access and Reverse Commute Program and The Clean Fuels Formula Program

Each Applicant to FTA for Urbanized Area Formula Program assistance authorized by 49 U.S.C. 5307, each Applicant for Job Access and Reverse Commute Program assistance authorized by section 3037 of the Transportation Equity Act for the 21st Century, 49 U.S.C. 5309 note, and each Applicant for the Clean Fuels Formula Program assistance authorized by 49 U.S.C. 5308 must provide the following certifications in connection with its application. FTA may not award Urbanized Area Formula Program assistance, the Job Access and Reverse Commute Program assistance, or the Clean Fuels Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances by selecting Category ''13.'' A state or other Applicant providing certifications and assurances on behalf of its prospective subrecipients is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances.

In addition, each Applicant that has received Transit Enhancement funding authorized by 49 U.S.C. 5307(k)(1) must include within its quarterly report for the fourth quarter of the preceding Federal fiscal year a list of the projects carried out during the preceding Federal fiscal year with those Transit Enhancement funds. That list constitutes the report of transit projects carried out during the preceding fiscal year to be submitted as part of the Applicant's annual certifications and assurances, as required by 49 U.S.C. 5307(k)(3), and is thus incorporated by reference and made part of that Applicant's annual certifications and assurances. FTA may not award Urbanized Area Formula Program assistance to any Applicant that has received Transit Enhancement funding authorized by 49 U.S.C. 5307(k)(1), unless that Applicant's quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and that report contains the requisite list.

A. Certifications Required by Statute

(1) As required by 49 U.S.C. 5307(d)(1)(A) through (J), the Applicant certifies that:

(a) It has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;

(b) It will adequately maintain the equipment and facilities;

(c) It will ensure that elderly or handicapped persons, or any person presenting a Medicare card issued to himself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307, or for the Job Access and Reverse Commute Program at section 3037 of the Transportation Equity Act for the 21st Century (TEA–21), 49 U.S.C. 5309 note, not more than fifty (50) percent of the peak hour fare;

(d) In carrying out a procurement financed with Federal assistance authorized for the Urbanized Area Formula Program at 49 U.S.C. 5307, or the Job Access and Reverse Commute Program at section 3037 of TEA–21, 49 U.S.C. 5309 note, it will use competitive procurement (as defined or approved by the Secretary), it will not use a procurement using exclusionary or discriminatory specifications, and it will comply with applicable Buy America laws in carrying out a procurement;

(e) It has complied or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it has made available, or before submitting its application, it will make available: (1) to the public information on amounts available for the Urbanized Area Formula Program at 49 U.S.C. 5307 and, if applicable, the Job Access and Reverse Commute Grant Program, 49 U.S.C. 5309 note, and the program of projects it proposed to undertake with those funds; (2) in consultation with interested parties including private transportation providers, develop a proposed program of projects for activities to be financed; (3) publish a proposed program of projects in a way that affected citizens, private transportation providers and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (4) provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; and (5) ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and (7) make the final program of projects available to the public;

(f) It has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) and applicable FTA policy (specifying Federal and local shares of project costs);

(g) It will comply with: 49 U.S.C. 5301(a) (requirements for transportation systems that maximize mobility and minimize fuel consumption and air pollution); 49 U.S.C. 5301(d) (requirements for transportation of the elderly and persons with disabilities); 49 U.S.C. 5303 through 5306 (planning requirements); and 49 U.S.C. 5301(d) (special efforts for designing and providing mass transportation for the elderly and persons with disabilities);

(h) It has a locally developed process to solicit and consider public comment before raising fares or implementing a major reduction of transportation; and

(i) As required by 49 U.S.C. 5307(d)(1)(J), unless it has determined that it is not necessary to expend one (1) percent of the amount of Federal assistance it receives for this fiscal year apportioned in accordance with 49 U.S.C. 5336 for transit security projects, it will expend at least one (1) percent of the amount of that assistance for transit security projects, including increased lighting in or adjacent to a transit system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned transit system.

(2) As required by 49 U.S.C. 5307(k)(3), if it has received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1), its quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of projects implemented in the preceding Federal fiscal year using Transit Enhancement funds, and that report is made part of its certifications and assurances.

B. Certification Required for Capital Leasing

As required by FTA regulations, ''Capital Leases,'' at 49 CFR 639.15(b)(1) and 49 CFR 639.21, to the extent the Applicant uses Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, to acquire any capital asset by lease, the Applicant certifies that:

(1) It will not use Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset;

(2) It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

(3) It will not enter into a capital lease for which FTA can only provide incremental funding unless it has the financial capacity to meet its future obligations under the lease in the event Federal assistance is not available for capital projects in subsequent years.

C. Certification Required for Sole Source Purchase of Associated Capital Maintenance Item

As required by 49 U.S.C. 5325(c), to the extent that the Applicant procures an associated capital maintenance item under the authority of 49 U.S.C. 5307(b)(1), the Applicant certifies that it will use

competition to procure an associated capital maintenance item unless the manufacturer or supplier of that item is the only source for the item and the price of the item is no more than the price similar customers pay for the item, and maintain sufficient records pertaining to each such procurement on file easily retrievable for FTA inspection.

D. Clean Fuels Program Certification

As required by 49 U.S.C. 5308(c)(2), the Applicant certifies that, in connection with any application for assistance authorized for the Clean Fuels Formula Program, vehicles purchased with grant funds made available for 49 U.S.C. 5308 will be operated only with clean fuels.

14. Certifications and Assurances for the Elderly and Persons With Disabilities Program

An Applicant that intends to administer the Elderly and Persons with Disabilities Program on behalf of a state must provide the following certifications and assurances. In providing certifications and assurances on behalf of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award assistance for the Elderly and Persons with Disabilities Program until the Applicant provides these certifications and assurances by selecting Category ''14.''

The Applicant administering on behalf of the state the Elderly and Persons with Disabilities Program authorized by 49 U.S.C. 5310 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive and disburse Federal assistance authorized for 49 U.S.C. 5310; and to implement and manage the project.

B. The state assures that each subrecipient either is recognized under state law as a private nonprofit organization with the legal capability to contract with the state to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.

C. The private nonprofit subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the state concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.

D. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

E. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance awarded for this project.

F. The state assures that before issuing the state's formula approval of a project, its Elderly and Persons with Disabilities Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located; and any public body that is a prospective subrecipient of capital assistance has provided an opportunity for a public hearing.

G. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications the state has signed. Having taken appropriate measures to secure the necessary compliance by each subrecipient, the state assures, on behalf of each subrecipient, that each subrecipient has:

(1) Coordinated or will coordinate to the maximum extent feasible with other transportation providers and users, including social service agencies authorized to purchase transit service;

(2) Complied or will comply with all applicable civil rights requirements;

(3) Complied or will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs;

(4) Complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(5) Complied with or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(6) Viewing its demand responsive service to the general public in its entirety, complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standard of equivalent service set forth in 40 CFR 37.77(c), if it purchases non-accessible vehicles for use in demand responsive service for the general public;

(7) Established or will establish a procurement system and conducted or will conduct its procurements in compliance with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue;

(8) Complied or will comply with the requirement that its project provides for the participation of private mass transportation companies to the maximum extent feasible;

(9) Paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(10) Complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(11) Complied or will comply with all applicable nonprocurement suspension and debarment requirements;

(12) Complied or will comply with all applicable bus testing requirements for new bus models;

(13) Complied with, or to the extent required by FTA, will comply with, applicable FTA Intelligent Transportation System (ITS) architecture requirements; and

(14) Complied or will comply with all applicable pre-award and post-delivery review requirements.

H. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FT regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

I. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

J. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the State and its subrecipients will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also knowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by its subrecipients to assure compliance with applicable Federal requirements.

15. Certifications and Assurances for the Nonurbanized Area Formula Program

An Applicant that intends to administer the Nonurbanized Area Formula Program on behalf of a state must provide the following certifications and assurances. In providing certifications and assurances on behalf of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award Nonurbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances by selecting Categories ''1'' through 11'' and ''15.''

The Applicant administering on behalf of the state the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311 certifies and assurances that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.

B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

C. The state assures that before issuing the state's formal approval of the project, its Nonurbanized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; to the extent applicable, projects are included in a metropolitan Transportation Improvement Program.

D. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.

E. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications the state has signed. Having taken appropriate measures to secure the necessary compliance by each subrecipient, the state assure, on behalf of each subrecipient, that each subrecipient has:

(1) Coordinated or will coordinate to the maximum extent feasible with other transportation providers and users, including social service agencies authorized to purchase transit service;

(2) Complied or will comply with all applicable civil rights requirements;

(3) Complied or will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs;

(4) Complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(5) Complied or will comply with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (1) signing the Special Warranty for the Nonurbanized Area Formula Program, (2) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (3) obtaining a waiver from DOL; and the state has certified the subrecipient's compliance to DOL;

(6) Complied or will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance;

(7) Complied with or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(8) Viewing its demand responsive service to the general public in its entirety, complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standard of equivalent service set forth in 40 CFR 37.77(C), if it purchases non-accessible vehicles for use in demand responsive service for the general public;

(9) Established or will establish a procurement system and conducted or will conduct its procurements in compliance with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue;

(10) Complied or will comply with the requirement that its project provides for the participation of private enterprise to the maximum extent feasible;

(11) Paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(12) Complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(13) Complied or will comply with all applicable nonprocurement suspension and debarment requirements;

(14) Complied or will comply with all applicable bus testing requirements for new bus models;

(15) Complied or will comply with all applicable pre-award and post-delivery review requirements;

(16) Complied with or will comply with all assurances FTA requires for projects involving real property;

(17) Complied with, or to the extent required by FTA, will comply with, applicable FTA Intelligent Transportation System (ITS) architecture requirements; and

(18) Complied with, or to the extent required by FTA will comply with, applicable anti-drug and alcohol program requirements.

F. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

G. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

H. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the State and its subrecipients will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by its subrecipient to assure compliance with applicable Federal requirements.

I. As required by 49 U.S.C. 5311(f), the state will expend not less than fifteen (15) percent of the Federal assistance authorized for 49 U.S.C. 5311(f) and apportioned during this fiscal year to carry out a program to develop and support intercity bus transportation, unless the chief executive officer of the state or his or her duly authorized designee certifies that the intercity bus service needs of the state are being adequately met.

16. Certifications and Assurances for the State Infrastructure Bank Program

An Applicant for a grant of Federal assistance for deposit in the State Infrastructure Bank (SIB) must provide the following certifications and assurances. In providing certifications and assurances on behalf of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award assistance for the State Infrastructure Bank program to the Applicant until the Applicant provides these certifications and assurances by selecting Categories ''1'' through 11,'' and ''16.''

The state serving as the Applicant for Federal assistance for the Transit Account of its State Infrastructure Bank (SIB) program authorized by either section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, certifies and assures that the following requirements and conditions will be fulfilled pertaining to any project financed with Federal assistance derived from the Transit Account of the SIB:

A. The state organization serving as the Applicant (state) agrees and assures the agreement of the SIB and each recipient of Federal assistance derived from the Transit Account of the SIB within the state (subrecipient) that each Project financed with Federal assistance derived from the Transit Account will be administered in accordance with the:

(1) Applicable provisions of section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or of the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, and any further amendments thereto;

(2) Provisions of any applicable Federal guidance that may be issued;

(3) Terms and conditions of Department of Labor Certification(s) of Transit Employee Protective Arrangements that are required by Federal law or regulations;

(4) Provisions of FHWA and FTA cooperative agreement with the state to establish the state's SIB program; and

(5) Provisions of the FTA grant agreement with the state that obligating Federal assistance for the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that grant agreement will not apply if it conflicts with any provision of National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or section 1511 of TEA–21, as amended, 23 U.S.C. 181 note, and Federal guidance on SIBs, the provisions of the cooperative agreement establishing the SIB program within the state, or the text within the FTA grant agreement.

B. The state agrees to comply with and assures the compliance of the SIB and each subrecipient of assistance under the SIB with all applicable requirements for the SIB program, as those requirements may be amended from time and time. Pursuant to the requirements of subsection 1511(h)(2) of TEA–21, 23 U.S.C. 181 note, applicants for

assistance authorized by the state Infrastructure Bank Pilot Program agree that previous cooperative agreements entered into with states under section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, will be revised to comply with new requirements.

C. The state assures that the SIB will provide Federal assistance from its Transit Account only for transit capital projects eligible under section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note or under section 1511 of TEA–21, 23 U.S.C. 181 note, and that those projects will fulfill all requirements imposed on comparable capital transit projects financed by FTA.

D. The state understands that the total amount of funds to be awarded for a grant agreement will not be immediately available for draw down. Consequently, the state assures that it will limit the amount of Federal assistance it draws down for deposit in the SIB to amounts that do not exceed the limitations specified in the underlying grant agreement or the approved project budget for that grant agreement.

E. The state assures that each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized by Federal statute for use in the SIB, and to implement, manage, operate, and maintain the project and project property for which such assistance will support.

F. The state recognizes that the SIB, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications the state has signed. Having taken appropriate measures to secure the necessary compliance by the SIB, the state assures, on behalf of the SIB, that:

(1) The SIB has complied or will comply with all applicable civil rights requirements;

(2) The SIB has complied or will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs;

(3) The SIB will provide Federal assistance only to a subrecipient that is either a public or private entity recognized under state law as having the legal capability to contract with the state to carry out its proposed project;

(4) Before the SIB enters into an agreement with a subrecipient under which Federal assistance will be disbursed to the subrecipient, the subrecipient's project is included in the Statewide Transportation Improvement Program; all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located; a certification that an opportunity for a public hearing has been provided;

(5) The SIB will not provide Federal financial assistance for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until the required Federal environmental finding has been made. Moreover, the SIB will provide no financial assistance for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until the required Federal conformity finding has been made;

(6) Before the SIB provides Federal assistance for a transit project, each subrecipient will have complied with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project; and

(7) The SIB will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed, including specific provisions that any security or debt financing instrument the SIB may issue will contain an express statement that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

H. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications the state has signed. Having taken appropriate measures to secure the necessary compliance by the SIB and each subrecipient, the state assures, on behalf of each subrecipient, that each subrecipient has:

(1) Complied or will comply with all applicable civil rights requirements;

(2) Complied or will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs;

(3) Complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(4) Complied or will comply with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project;

(5) Complied or will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance;

(6) Complied with or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(7) Viewing its demand responsive service to the general public in its entirety, complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standard of equivalent service set forth in 40 CFR 37.77(c), if it purchases non-accessible vehicle for use in demand responsive service for the general public;

(8) Established or will establish a procurement system and conducted or will conduct its procurements in compliance with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue;

(9) Complied or will comply with the requirement that its project provides for the participation of private mass transportation companies to the maximum extent feasible;

(10) Paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(11) Complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(12) Complied or will comply with all nonprocurement suspension and debarment requirements;

(13) Complied with or will comply with all applicable bus testing requirements for new bus models;

(14) Complied with or will comply with all applicable pre-award and post-delivery review requirements;

(15) Complied with or will comply with all assurances FTA requires for projects involving real property;

(16) Complied with, or to the extent required by FTA, will comply with, applicable FTA Intelligent Transportation System (ITS) architecture requirements; and

(17) Complied with, or to the extent required by FTA will comply with, applicable anti-drug and alcohol program requirements.

I. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the SIB and its subrecipients, as well as the states, will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by the SIB and its subrecipients to assure compliance with applicable Federal requirements.

Selection and Signature Pages follow.

BILLING CODE 4910–57–M

Appendix A

FEDERAL FY 2002 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE
(Alternative to Electronic Filing)

Name of Applicant: _____

The Applicant agrees to comply with applicable requirements of Categories 1 - 16. ____
(The Applicant may make this selection in lieu of individual selections below.)
OR
The Applicant agrees to comply with the applicable requirements of the following Categories it has selected:

1. Certifications and Assurances Required of Each Applicant. ____

2. Lobbying Certification ____

3. Certification Pertaining to Effects on Private Mass Transportation Companies ____

4. Public Hearing Certification for a Project with Substantial Impacts ____

5. Certification for the Purchase of Rolling Stock ____

6. Bus Testing Certification. ____

7. Charter Service Agreement. ____

8. School Transportation Agreement. ____

9. Certification for Demand Responsive Service ____

10 Prevention of Alcohol Misuse and Prohibited Drug Use Certification ____

11 Certification Required for Interest and Other Financing Costs ____

12. Intelligent Transportation Systems Program Assurance ____

13. Certifications and Assurances for the Urbanized Area Formula Program, the Job Access and Reverse Commute Program, and the Clean Fuels Formula Program ____

14. Certifications and Assurances for the Elderly and Persons with Disabilities Program ____

15. Certifications and Assurances for the Nonurbanized Area Formula Program ____

16. Certifications and Assurances for the State Infrastructure Bank (SIB) Program ____

(Both sides of this Signature Page must be appropriately completed and signed as indicated.)

Appendix A

FEDERAL FISCAL YEAR 2002 FTA CERTIFICATIONS AND ASSURANCES

(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW I, _____ (name), on behalf of the Applicant, declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and administrative guidance required for each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2002.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2002.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with the Urbanized Area Formula Program, 49 U.S.C. 5307, and may apply to any other certification, assurance, or submission made in connection with any other program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature_____ Date: _____
Name_____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

for _____ (Name of Applicant)

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Signature_____ Date: _____
Name_____
Applicant's Attorney

Each Applicant for FTA financial assistance (except 49 U.S.C. 5312(b) assistance) and each FTA Grantee with an active capital or formula project must provide an Attorney's affirmation of the Applicant's legal capacity. The Applicant may enter its PIN in lieu of the electronic signature of its Attorney, provided the Applicant has on file this Affirmation of its Attorney in writing dated this Federal fiscal year.

[FR Doc. 01–32118 Filed 12–31–01; 8:45 am]
BILLING CODE 4910–57–C

Federal Register

Wednesday,
January 2, 2002

Part III

Department of Transportation

Federal Transit Administration

Fiscal Year 2002 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2002 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: This Notice contains FTA's comprehensive compilation of the Federal Fiscal Year 2002 certifications and assurances to be used in connection with all Federal assistance programs FTA administers during Federal Fiscal Year 2002, as required by 49 U.S.C. 5323(n).

EFFECTIVE DATE: January 2, 2002.

FOR FURTHER INFORMATION CONTACT: FTA staff in the appropriate Regional Office listed below. For copies of other related documents, see the FTA Web site at *http://www.fta.dot.gov* or contact the Office of Public Affairs, Federal Transit Administration (202) 366–4019.

Region 1: Boston

States served: Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and Massachusetts Telephone # 617–494–2055.

Region 2: New York

States served: New York, New Jersey, and Virgin Islands Telephone # 212–668–2170.

Region 3: Philadelphia

States served: Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia Telephone # 215–656–7100.

Region 4: Atlanta

States served: Kentucky, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Puerto Rico Telephone # 404–562–3500.

Region 5: Chicago

States served: Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio Telephone # 312–353–2789.

Region 6: Dallas/Ft. Worth

States served: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico Telephone # 817–978–0550.

Region 7: Kansas City

States served: Missouri, Iowa, Kansas, and Nebraska Telephone # 816–329–3920.

Region 8: Denver

States served: Colorado, Utah, Wyoming, Montana, North Dakota, and South Dakota, Telephone # 303–844–3242.

Region 9: San Francisco

States served: California, Hawaii, Guam, Arizona, Nevada, American Samoa, and the Northern Mariana Islands Telephone # 415–744–3133

Region 10: Seattle

States served: Idaho, Oregon, Washington, and Alaska Telephone # 206–220–7954.

SUPPLEMENTARY INFORMATION: Before FTA may award a Federal grant or cooperative agreement, the Applicant must provide to FTA all certifications and assurances pertaining to itself or its project as required by Federal laws and regulations. The requisite certifications and assurances must be submitted to FTA irrespective of whether the project is financed under the authority of 49 U.S.C. chapter 53, or title 23, United States Code, or another Federal statute.

The Applicant's Annual Certifications and Assurances for Federal Fiscal Year 2002 cover all projects for which the Applicant seeks funding during that fiscal year. An Applicant's Annual Certifications and Assurances applicable to a specific grant or cooperative agreement generally remain in effect either for the life of the grant or cooperative agreement to closeout, or for the life of the project or project property when a useful life or industry standard life is in effect, whichever occurs later; except, however, if in a later year, the Applicant provides certifications and assurances that differ from the certifications and assurances previously made, the later certifications and assurances will apply to the grant, cooperative agreement, project, or project property, except as FTA otherwise permits.

Background

Since Federal Fiscal Year 1995, FTA has been consolidating the various certifications and assurances that may be required into a single document. FTA intends to continue publishing this document annually in conjunction with its publication of the FTA annual apportionment Notice, which allocates funds made available by the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act.

Federal Fiscal Year 2002 Changes

The following changes have been made:

(1) In Certification 1.J(18), a reference to the latest OMB A–133 Compliance Supplement provisions for the Department of Transportation, dated March 2001 has been substituted for the previous compliance supplement.

(2) In Certification 10, new FTA regulations, ''Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,'' 49 CFR part 655, replace FTA's former separate drug and alcohol regulations.

(3) A new Intelligent Transportation Systems Program Assurance, (Number 12) has been added to cover the provisions of Section VII of FTA Notice, ''FTA National ITS Architecture Policy on Transit Projects'' 66 FR 1455 *et seq.*, January 8, 2001. Accordingly, former Certifications 12, 13, 14, and 15 have been renumbered 13, 14, 15, and 16.

(4) In Certification 16, a reference to Federal guidance was substituted for the reference to FTA guidelines because it is unlikely that FTA will issue State Infrastructure Bank guidelines.

Text of Federal Fiscal Year 2002 Certifications and Assurances

A detailed compilation of the provisions of the Certifications and Assurances and the Signature Page as set forth in Appendix A of this Notice, also appears in the ''Cert's & Assurances'' tab page of FTA's electronic award and management system. It is important that each Applicant be familiar with all sixteen (16) certification and assurance categories contained in this Notice, as they may be a prerequisite for receiving FTA financial assistance. Provisions of this Notice supersede conflicting statements in any circular containing a previous version of the Annual Certifications and Assurances. The certifications and assurances contained in those circulars are merely examples, and are not acceptable or valid for Federal Fiscal Year 2002; do not rely on the statements within certifications and assurances appearing in circulars.

Significance of Certifications and Assurances

Selecting and submitting certifications and assurances to FTA, either through FTA's electronic award and management system or submission of the Signature Page of Appendix A, signifies the Applicant's intent to comply with the requirements of those certifications and assurances to the extent they apply to a program for which the Applicant submits an application for assistance in Federal Fiscal Year 2002.

Requirement for Attorney's Signature

FTA requires a current (Federal Fiscal Year 2002) attorney's affirmation of the

Applicant's legal authority to certify compliance with the funding obligations in this document. Irrespective of whether the Applicant chooses to make a single selection for all 16 categories or select individual options from the 16 categories, the attorney's signature from a previous year is not acceptable.

Deadline for Submission

All Applicants for FTA capital investment program or formula program assistance, and current grantees with an active project financed with FTA capital investment program or formula program assistance, are expected to provide Federal Fiscal Year 2002 Certifications and Assurances within 90 days from the date of this publication or with its first grant application in Fiscal Year 2002, whichever is first. Other Applicants are encouraged to submit their certifications and assurances as soon as possible.

Preference for Electronic Submission

FTA has expanded the use of the electronic programs for Applicants, first introduced in 1995. FTA expects Applicants registered in FTA's electronic award and management system to submit their applications as well as certifications and assurances electronically through FTA's electronic award and management system. Only if an Applicant is unable to submit its certifications and assurances through FTA's electronic award and management system should the Applicant use the Signature Page form in Appendix A of this Notice.

Procedures for Electronic Submission

The ''Cert's & Assurances'' tab page of FTA's electronic award and management system contain fields for selecting the certifications and assurances to be submitted. Within that tab page are fields for the Applicant's authorized representative and its attorney to enter their personal identification numbers (PINs), and thus ''sign'' the certifications and assurances for electronic transmission to FTA. In certain circumstances, the Applicant may enter its PIN number in lieu of an electronic signature provided by its Attorney, provided the Applicant has on file the Affirmation of its Attorney in writing dated this Federal fiscal year as set forth in Appendix A of this Notice. Applicants may contact the appropriate Regional Office listed in this Notice or the Helpdesk for FTA's electronic award and management system for more information.

Procedures for Paper Submission

The following procedures apply to an Applicant that is unable to submit its certifications electronically. The Applicant must mark the certifications and assurances it is making on the Signature Page form in Appendix A of this Notice and submit it to FTA. The Applicant may signify compliance with all Categories by placing a single mark in the appropriate space at the top of the Signature Selection Page in Appendix A. In certain circumstances, the Applicant may certify in lieu of the signature of its Attorney, provided the Applicant has on file the Affirmation of its Attorney in writing dated this Federal fiscal year as set forth in Appendix A of this Notice. Applicants may contact the appropriate Regional Office listed in this Notice for more information.

References

The Transportation Equity Act for the 21st Century, Pub. L. 105–178, June 9, 1998, as amended by the TEA–21 Restoration Act 105–206, 112 Stat. 685, July 22, 1998, 49 U.S.C. chapter 53, Title 23, United States Code, U.S. DOT and FTA regulations at 49 CFR, and FTA Circulars.

Dated: December 21, 2001.

Jennifer L. Dorn,

Administrator.

BILLING CODE 4910–57–P

Appendix A

Federal Fiscal Year 2002 Certifications and Assurances for Federal Transit Administration Assistance Programs

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) programs. FTA requests each Applicant to provide as many certifications and assurances as needed to cover all programs for which it will seek FTA assistance in Federal Year 2002. FTA strongly encourages the Applicant to submit its certifications and assurances through FTA's electronic award and management system.

The 16 Categories of certifications and assurances are listed by numbers 1 through 16 on the Cert's & Assurances tab page of the FTA electronic award and management system and on the opposite side of the Signature Page at the end of this document. Categories 2 through 16 will apply to some, but not all, applicants. The designation of the 16 categories corresponds to the circumstances mandating submission of specific certifications, assurances, or agreements.

1. Certifications and Assurances Required of Each Applicant

Each Applicant for FTA assistance awarded must provide all certifications and assurances in this Category ''1.'' FTA may not award any Federal assistance until the Applicant provides these certifications and assurances by selecting Category ''1.''

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under state and local law and the by-laws or internal rules of the Applicant organization to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant;

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and

(3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement issued for its project with FTA. The Applicant recognizes that Federal laws, regulations, policies, and administrative practices might be modified from time to time and they may affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

C. Debarment, Suspension, and Other Responsibility Matters for Primary Covered Transactions

As required by U.S. DOT regulations on Governmentwide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:

(1) The Applicant (Primary Participant) certifies, to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not, within a three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this certification had one or more

public transactions (Federal, state, or local) terminated for cause or default.

(2) The Applicant also certifies that, if it later becomes aware of any information contradicting the statements of paragraph (1) above, it will promptly provide that to FTA.

(3) If the Applicant (Primary Participant) is unable to certify to all statements in paragraphs (1) and (2) of this certification, it shall indicate so in its applications, or in the transmittal letter or message accompanying its annual certifications and assurances, and provide a written explanation to FTA.

D. Drug-Free Workplace Agreement

As required by U.S. DOT regulations, ''Drug-Free Workplace Requirements (Grants),'' 49 CFR part 29, Subpart F, and as modified by 41 U.S.C. 702, the Applicant agrees that it will provide a drug-free workplace by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace and specifying the actions that will be taken against its employees for violation of that prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employee about:

(a) The dangers of drug abuse in the workplace;

(b) Its policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each of its employees to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (1) of this certification;

(4) Notifying each of its employees in the statement required by paragraph (1) of this certification that, as a condition of employment financed with Federal assistance provided by the grant or cooperative agreement, the employee will be required to:

(a) Abide by the terms of the statement; and

(b) Notify the employer (Applicant) in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after that conviction;

(5) Notifying FTA in writing, within ten (10) calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction. The Applicant, as employer of any convicted employee, must provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement;

(6) Taking one of the following actions within thirty (30) calendar days of receiving notice under paragraph (4)(b) of this agreement with respect to any employee who is so convicted:

(a) Taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(b) Requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency; and

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) of this agreement. The Applicant agrees to maintain a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted, and make that list readily accessible to FTA.

E. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance it submits to FTA has been or will be submitted for intergovernmental review to the appropriate state and local agencies in accordance with applicable state requirements. The Applicant also assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, ''Intergovernmental Review of Department of Transportation Programs and Activities,'' 49 CFR part 17.

F. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, ''Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,'' 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, ''Title VI Program Guidelines for Federal Transit Administration Recipients'', and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.

(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.

(4) The Applicant assures that it will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

(5) As required by 49 CFR 21.7(a)(2), the Applicant will include in each third party contract or subagreement provisions to invoke the requirements of 49 U.S.C. 5332 and 49 CFR part 21, and include provisions to invoke those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

G. Disadvantaged Business Enterprise Assurance

In accordance with 49 CFR 26.13(a), the Recipient assures that it shall not discriminate on the basis of race, color, national origin, or sex in the implementation of the project and in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 CFR part 26. The Recipient assures that it shall take all necessary and reasonable steps set forth in 49 CFR part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from the U.S. DOT. The Recipient's DBE program, as required by 49 CFR part 26 and approved by the U.S. DOT, will be incorporated by reference and made part of the grant agreement or cooperative agreement for any Federal assistance awarded by FTA or U.S. DOT. Implementation of this DBE program is a legal obligation of the Recipient, and failure to carry out its terms shall be treated as a violation of the grant agreement or cooperative agreement. Upon notification by the Government to the Recipient of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.*

H. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, ''Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,'' at 49 CFR 27.9, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to

participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.,* and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.* at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

I. Procurement Compliance

The Applicant certifies that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and FTA third party contracting regulations when promulgated, as well as other requirements FTA may issue. The Applicant certifies that it will include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and each contractor will also include in its subagreements and contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

J. Certifications Required by the U.S. Office of Management and Budget (SF–424B and SF–424D)

A required by the U.S. Office of Management and Budget (OMB), the Applicant certifies that it:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in its application;

(2) Will give FTA, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;

(5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, ''Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,'' 49 CFR part 25, which prohibits discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibit discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92–255, March 21, 1972, and amendments thereto, relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L. 91–616, Dec. 31, 1970, and amendments thereto, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd–3 and 290ee–3, related to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing;

(i) Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided including, but not limited to section 1101(b) of the Transportation Equity Act for the 21st Century, 23 U.S.C. 101 note, which provides for participation of disadvantaged business enterprises in FTA programs; and

(j) The requirements of any other nondiscrimination statute(s) that may apply to the project;

(6) Will comply, or has compiled, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal of federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. As required by U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' at 49 CFR 24.4, and sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, the Applicant assures that it has the requisite authority under applicable state and local law and will comply or has complied with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.,* and U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR part 24 including, but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations or associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will participate in the Applicant's eligible costs of providing payments for those expenses as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be found by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;

(7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 276a through 276a(7), the Copeland Act, as amended, 18 U.S.C. 874 and 40 U.S.C. 276c, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 333, regarding labor standards for federally-assisted subagreements;

(8) To the extent applicable, will comply with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring recipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(9) Will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801,

which prohibits the use of lead-based paint in construction or rehabilitation of residence structures;

(10) Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from the awarding agency;

(11) Will record the Federal interest in the title of real property in accordance with FTA directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscriminating during the useful life of the project;

(12) Will comply with FTA requirements concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, ''Seismic Safety,'' 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with 49 CFR part 41 seismic design and construction requirements;

(13) Will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by FTA or the state;

(14) Will comply with environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.* and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved state management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*;

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 *et seq.;*

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300h *et seq.*;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.;* and

(i) Environmental protections for Federal transit programs, including, but not limited to protections for a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance or any land from a historic site of national, state, or local significance used in a transit project as required by 49 U.S.C. 303;

(j) Will comply with the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 *et seq.* relating to protecting components of the national wild and scenic rivers systems; and

(k) Will assist FTA in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note, and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469a–1 *et seq.;*

(15) To the extent applicable, will comply with provisions of the Hatch Act, 5 U.S.C. 1501 through 1508, and 7324 through 7326, which limit the political activities of state and local agencies and their officers and employees whose principal employment activities are financed in whole or part with Federal funds including a Federal loan, grant, or cooperative agreement, but pursuant to 23 U.S.C. 142(g), does not apply to a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act does not otherwise apply;

(16) Will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance and DOT regulations, ''Protection of Human Subjects,'' 49 CFR part 11;

(17) Will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.* pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by FTA assistance;

(18) Will have performed the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.* and OMB Circular No. A–133, ''Audits of States, Local Governments, and Non-Profit Organizations and Department of Transportation provisions of OMB A–133 Compliance Supplement, March 2001''; and

(19) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the project.

2. Lobbying Certification for an Application Exceeding $100,000:

An Applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding $100,000 must provide the following certification. FTA may not award Federal assistance for an application exceeding $100,000 until the Applicant provides this certification by selecting Category ''2.''

A. As required by U.S. DOT regulations, ''New Restrictions on Lobbying,'' at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress pertaining to the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' including the information required by the form's instructions, which may be amended to omit such information as permitted by 31 U.S.C. 1352.

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. Certification pertaining To The Effects of The Project on Private Mass Transportation Companies

A State or local government Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 to acquire the property of or an interest therein of a private mass transportation company or to operate mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company must provide the following certification. FTA may not award Federal assistance for that project until the Applicant provides this certification by selecting Category ''3.''

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires property or an interest in property of a private mass transportation company or operates mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company it has or will have:

A. Found that the assistance is essential to carrying out a program of projects as determined by the plans and programs of the metropolitan planning organization;

B. Provided for the participation of private mass transportation companies to the maximum extent feasible consistent with applicable FTA requirements and policies;

C. Paid just compensation under state or local law to a private mass transportation company for its franchises or property acquired; and

D. Acknowledged that the assistance falls within the labor standards compliance

requirements of 49 U.S.C. 5333(a) and 5333(b).

4. Public Hearing Certification For a Capital Project That Will Substantially Affect A Community or Its Transit Service

An Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or the community's mass transportation service must provide the following certification. FTA may not award Federal assistance for that project until the Applicant provides this certification by selecting Category ''4.''

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, will have:

A. Provided an adequate opportunity for a public hearing with adequate prior notice of the proposed project published in a newspaper of general circulation in the geographic area to be served;

B. Held that hearing and provided FTA a transcript or detailed report summarizing the issues and responses, unless no one with a significant economic, social, or environmental interest requests a hearing;

C. Considered the economic, social, and environmental effects of the project; and

D. Determined that the project is consistent with official plans for developing the urban area.

5. Certification of Pre-Award And Post-Delivery Reviews Required For Acquisition of Rolling Stock

An Applicant seeking FTA assistance to acquire rolling stock must provide the following certification. FTA may not provide assistance to acquire rolling stock until the Applicant provides this certification by selecting Category ''5.''

As required by 49 U.S.C. 5323(m) and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663 when procuring revenue service rolling stock. Among other things, the Applicant agrees to conduct or cause to be conducted the requisite pre-award and post-delivery reviews, and maintain on file the certifications required by 49 CFR part 663, subpart B, C, and D.

6. Bus Testing Certification Required For New Bus Acquisitions

An Applicant seeking FTA assistance to acquire new buses must provide the following certification. FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification by selecting Category ''6.''

As required by FTA regulations, ''Bus Testing,'' at 49 CFR 665.7, the Applicant certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or authorizing final acceptance of that bus (as described in 49 CFR part 665):

A. The model of the bus will have been tested at a bus testing facility approved by FTA; and

B. It will have received a copy of the test report prepared on the bus model.

7. Charter Service Agreement

An Applicant seeking FTA assistance to acquire or operate transportation equipment or facilities financed with Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310) or Title 23, U.S.C. must enter into the following charter service agreement. FTA may not provide assistance for projects authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310) or Title 23, U.S.C. until the Applicant enters into this agreement by selecting Category ''7.''

A. As required by 49 U.S.C. 5323(d) and FTA regulations, ''Charter Service,'' at 49 CFR 604.7, the Applicant agrees that it and its recipients will:

(1) Provide charter service that uses equipment or facilities acquired with Federal assistance authorized for 49 U.S.C. 5307, 5309, or 5311 or Title 23 U.S.C., only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its recipients desire to provide, unless one or more of the exceptions in 49 CFR 604.9 applies; and

(2) Comply with the provisions of 49 CFR part 604 before they provide any charter service using equipment of facilities acquired with Federal assistance authorized for the above statutes.

B. The Applicant understands that the requirements of 49 CFR part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this agreement, and violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

8. School Transportation Agreement

An Applicant seeking FTA assistance to acquire or operate transportation facilities and equipment using Federal assistance authorized by 49 U.S.C. chapter 53 or Title 23, U.S.C. must agree as follows. FTA may not provide assistance for transportation facilities until the Applicant enters into this Agreement by selecting Category ''8.''

A. As required by 49 U.S.C. 5323(f) and FTA regulations, ''School Bus Operation,'' at 49 CFR 605.14, the Applicant agrees that it and all its recipients will:

(1) Engage in school transportation operations in competition with private school transportation operators only to the extent permitted by 49 U.S.C. 5323(f), and implementing regulations; and

(2) Comply with the requirements of 49 CFR part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance awarded by FTA and authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. for transportation projects.

B. The Applicant understands that the requirements of 49 CFR part 605 will apply to any school transportation it provides, the definitions of 49 CFR part 605 apply to this school transportation agreement, and a violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

9. Certification Required for the Direct Award of FTA Assistance to an Applicant for Its Demand Responsive Service

An Applicant seeking direct Federal assistance to support demand responsive service must provide the following certification. FTA may not award Federal assistance directly to an Applicant to support its demand responsive service until the Applicant provides this certification by selecting Category ''9.''

As required by U.S. DOT regulation, ''Transportation Services for Individuals with Disabilities (ADA),'' at 49 CFR 37.77, the Applicant certifies that its demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service offered to persons without disabilities. When viewed in its entirety, the Applicant's service for persons with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

10. Prevention of Alcohol Misuse and Prohibited Drug Use Certification

If the Applicant is required by Federal regulations to provide the following certification concerning its activities to prevent alcohol misuse of prohibited drug use in its transit operations, FTA may not provide Federal assistance to that Applicant until it provides this certification by selecting Category ''10.''

As required by FTA regulations, ''Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,'' at 49 CFR part 665, subpart I, the Applicant certifies that it has established and implemented an anti-drug and alcohol misuse program, and has complied with or will comply with applicable requirements of FTA regulations, ''Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,'' at 49 CFR part 665.

11. Certification Required For Interest or Other Financing Costs

An Applicant that intends to request reimbursement of interest or other financing costs incurred for its capital projects must provide the following certification. FTA may not provide assistance to support those costs until the Applicant provides this certification by selection Category ''11.''

As required by 49 U.S.C. 5307(g), 49 U.S.C. 5309(g)(2)(B), 49 U.S.C. 5309(g)(3)(A), and 49 U.S.C. 5309(n), the Applicant certifies that it will not seek reimbursement for interest and other financing costs until its records demonstrate it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA might require.

12. Intelligent Transportation System Program Assurance

An Applicant for FTA assistance for an Intelligence Transportation System Project (ITS Project), defined as any project that in

whole or in part funds the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the National ITS Architecture,'' must provide the following assurance. FTA may not award any Federal assistance until the Applicant provides this assurance by selecting Category ''12.''

In compliance with Section VII of FTA Notice, ''FTA National ITs Architecture Policy on Transit Projects,'' at 66 FR 1459, January 8, 2001, in the course of implementing an ITS Project, the Applicant assures that it will comply, and require its third party contractors and subrecipients to comply, with all applicable requirements imposed by Section V (Regional ITS Architecture) and Section VI (Project Implementation) of that Notice.

13. Certifications and Assurances For The Urbanized Area Formula Program, The Job Access and Reverse Commute Program and The Clean Fuels Formula Program

Each Applicant to FTA for Urbanized Area Formula Program assistance authorized by 49 U.S.C. 5307, each Applicant for Job Access and Reverse Commute Program assistance authorized by section 3037 of the Transportation Equity Act for the 21st Century, 49 U.S.C. 5309 note, and each Applicant for the Clean Fuels Formula Program assistance authorized by 49 U.S.C. 5308 must provide the following certifications in connection with its application. FTA may not award Urbanized Area Formula Program assistance, the Job Access and Reverse Commute Program assistance, or the Clean Fuels Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances by selecting Category ''13.'' A state or other Applicant providing certifications and assurances on behalf of its prospective subrecipients is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances.

In addition, each Applicant that has received Transit Enhancement funding authorized by 49 U.S.C. 5307(k)(1) must include within its quarterly report for the fourth quarter of the preceding Federal fiscal year a list of the projects carried out during the preceding Federal fiscal year with those Transit Enhancement funds. That list constitutes the report of transit projects carried out during the preceding fiscal year to be submitted as part of the Applicant's annual certifications and assurances, as required by 49 U.S.C. 5307(k)(3), and is thus incorporated by reference and made part of that Applicant's annual certifications and assurances. FTA may not award Urbanized Area Formula Program assistance to any Applicant that has received Transit Enhancement funding authorized by 49 U.S.C. 5307(k)(1), unless that Applicant's quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and that report contains the requisite list.

A. Certifications Required by Statute

(1) As required by 49 U.S.C. 5307(d)(1)(A) through (J), the Applicant certifies that:

(a) It has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;

(b) It will adequately maintain the equipment and facilities;

(c) It will ensure that elderly or handicapped persons, or any person presenting a Medicare card issued to himself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307, or for the Job Access and Reverse Commute Program at section 3037 of the Transportation Equity Act for the 21st Century (TEA–21), 49 U.S.C. 5309 note, not more than fifty (50) percent of the peak hour fare;

(d) In carrying out a procurement financed with Federal assistance authorized for the Urbanized Area Formula Program at 49 U.S.C. 5307, or the Job Access and Reverse Commute Program at section 3037 of TEA–21, 49 U.S.C. 5309 note, it will use competitive procurement (as defined or approved by the Secretary), it will not use a procurement using exclusionary or discriminatory specifications, and it will comply with applicable Buy America laws in carrying out a procurement;

(e) It has complied or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it has made available, or before submitting its application, it will make available: (1) to the public information on amounts available for the Urbanized Area Formula Program at 49 U.S.C. 5307 and, if applicable, the Job Access and Reverse Commute Grant Program, 49 U.S.C. 5309 note, and the program of projects it proposed to undertake with those funds; (2) in consultation with interested parties including private transportation providers, develop a proposed program of projects for activities to be financed; (3) publish a proposed program of projects in a way that affected citizens, private transportation providers and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (4) provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; and (5) ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and (7) make the final program of projects available to the public;

(f) It has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) and applicable FTA policy (specifying Federal and local shares of project costs);

(g) It will comply with: 49 U.S.C. 5301(a) (requirements for transportation systems that maximize mobility and minimize fuel consumption and air pollution); 49 U.S.C. 5301(d) (requirements for transportation of the elderly and persons with disabilities); 49 U.S.C. 5303 through 5306 (planning requirements); and 49 U.S.C. 5301(d) (special efforts for designing and providing mass transportation for the elderly and persons with disabilities);

(h) It has a locally developed process to solicit and consider public comment before raising fares or implementing a major reduction of transportation; and

(i) As required by 49 U.S.C. 5307(d)(1)(J), unless it has determined that it is not necessary to expend one (1) percent of the amount of Federal assistance it receives for this fiscal year apportioned in accordance with 49 U.S.C. 5336 for transit security projects, it will expend at least one (1) percent of the amount of that assistance for transit security projects, including increased lighting in or adjacent to a transit system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned transit system.

(2) As required by 49 U.S.C. 5307(k)(3), if it has received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1), its quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of projects implemented in the preceding Federal fiscal year using Transit Enhancement funds, and that report is made part of its certifications and assurances.

B. Certification Required for Capital Leasing

As required by FTA regulations, ''Capital Leases,'' at 49 CFR 639.15(b)(1) and 49 CFR 639.21, to the extent the Applicant uses Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, to acquire any capital asset by lease, the Applicant certifies that:

(1) It will not use Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset;

(2) It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

(3) It will not enter into a capital lease for which FTA can only provide incremental funding unless it has the financial capacity to meet its future obligations under the lease in the event Federal assistance is not available for capital projects in subsequent years.

C. Certification Required for Sole Source Purchase of Associated Capital Maintenance Item

As required by 49 U.S.C. 5325(c), to the extent that the Applicant procures an associated capital maintenance item under the authority of 49 U.S.C. 5307(b)(1), the Applicant certifies that it will use

competition to procure an associated capital maintenance item unless the manufacturer or supplier of that item is the only source for the item and the price of the item is no more than the price similar customers pay for the item, and maintain sufficient records pertaining to each such procurement on file easily retrievable for FTA inspection.

D. Clean Fuels Program Certification

As required by 49 U.S.C. 5308(c)(2), the Applicant certifies that, in connection with any application for assistance authorized for the Clean Fuels Formula Program, vehicles purchased with grant funds made available for 49 U.S.C. 5308 will be operated only with clean fuels.

14. Certifications and Assurances for the Elderly and Persons With Disabilities Program

An Applicant that intends to administer the Elderly and Persons with Disabilities Program on behalf of a state must provide the following certifications and assurances. In providing certifications and assurances on behalf of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award assistance for the Elderly and Persons with Disabilities Program until the Applicant provides these certifications and assurances by selecting Category ''14.''

The Applicant administering on behalf of the state the Elderly and Persons with Disabilities Program authorized by 49 U.S.C. 5310 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive and disburse Federal assistance authorized for 49 U.S.C. 5310; and to implement and manage the project.

B. The state assures that each subrecipient either is recognized under state law as a private nonprofit organization with the legal capability to contract with the state to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.

C. The private nonprofit subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the state concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.

D. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

E. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance awarded for this project.

F. The state assures that before issuing the state's formula approval of a project, its Elderly and Persons with Disabilities Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located; and any public body that is a prospective subrecipient of capital assistance has provided an opportunity for a public hearing.

G. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications the state has signed. Having taken appropriate measures to secure the necessary compliance by each subrecipient, the state assures, on behalf of each subrecipient, that each subrecipient has:

(1) Coordinated or will coordinate to the maximum extent feasible with other transportation providers and users, including social service agencies authorized to purchase transit service;

(2) Complied or will comply with all applicable civil rights requirements;

(3) Complied or will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs;

(4) Complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(5) Complied with or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(6) Viewing its demand responsive service to the general public in its entirety, complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standard of equivalent service set forth in 40 CFR 37.77(c), if it purchases non-accessible vehicles for use in demand responsive service for the general public;

(7) Established or will establish a procurement system and conducted or will conduct its procurements in compliance with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue;

(8) Complied or will comply with the requirement that its project provides for the participation of private mass transportation companies to the maximum extent feasible;

(9) Paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(10) Complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(11) Complied or will comply with all applicable nonprocurement suspension and debarment requirements;

(12) Complied or will comply with all applicable bus testing requirements for new bus models;

(13) Complied with, or to the extent required by FTA, will comply with, applicable FTA Intelligent Transportation System (ITS) architecture requirements; and

(14) Complied or will comply with all applicable pre-award and post-delivery review requirements.

H. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FT regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

I. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

J. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the State and its subrecipients will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also knowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by its subrecipients to assure compliance with applicable Federal requirements.

15. Certifications and Assurances for the Nonurbanized Area Formula Program

An Applicant that intends to administer the Nonurbanized Area Formula Program on behalf of a state must provide the following certifications and assurances. In providing certifications and assurances on behalf of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award Nonurbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances by selecting Categories ''1'' through 11'' and ''15.''

The Applicant administering on behalf of the state the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311 certifies and assurances that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.

B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

C. The state assures that before issuing the state's formal approval of the project, its Nonurbanized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; to the extent applicable, projects are included in a metropolitan Transportation Improvement Program.

D. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.

E. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications the state has signed. Having taken appropriate measures to secure the necessary compliance by each subrecipient, the state assure, on behalf of each subrecipient, that each subrecipient has:

(1) Coordinated or will coordinate to the maximum extent feasible with other transportation providers and users, including social service agencies authorized to purchase transit service;

(2) Complied or will comply with all applicable civil rights requirements;

(3) Complied or will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs;

(4) Complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(5) Complied or will comply with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (1) signing the Special Warranty for the Nonurbanized Area Formula Program, (2) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (3) obtaining a waiver from DOL; and the state has certified the subrecipient's compliance to DOL;

(6) Complied or will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance;

(7) Complied with or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(8) Viewing its demand responsive service to the general public in its entirety, complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standard of equivalent service set forth in 40 CFR 37.77(C), if it purchases non-accessible vehicles for use in demand responsive service for the general public;

(9) Established or will establish a procurement system and conducted or will conduct its procurements in compliance with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue;

(10) Complied or will comply with the requirement that its project provides for the participation of private enterprise to the maximum extent feasible;

(11) Paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(12) Complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(13) Complied or will comply with all applicable nonprocurement suspension and debarment requirements;

(14) Complied or will comply with all applicable bus testing requirements for new bus models;

(15) Complied or will comply with all applicable pre-award and post-delivery review requirements;

(16) Complied with or will comply with all assurances FTA requires for projects involving real property;

(17) Complied with, or to the extent required by FTA, will comply with, applicable FTA Intelligent Transportation System (ITS) architecture requirements; and

(18) Complied with, or to the extent required by FTA will comply with, applicable anti-drug and alcohol program requirements.

F. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

G. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

H. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the State and its subrecipients will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by its subrecipient to assure compliance with applicable Federal requirements.

I. As required by 49 U.S.C. 5311(f), the state will expend not less than fifteen (15) percent of the Federal assistance authorized for 49 U.S.C. 5311(f) and apportioned during this fiscal year to carry out a program to develop and support intercity bus transportation, unless the chief executive officer of the state or his or her duly authorized designee certifies that the intercity bus service needs of the state are being adequately met.

16. Certifications and Assurances for the State Infrastructure Bank Program

An Applicant for a grant of Federal assistance for deposit in the State Infrastructure Bank (SIB) must provide the following certifications and assurances. In providing certifications and assurances on behalf of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award assistance for the State Infrastructure Bank program to the Applicant until the Applicant provides these certifications and assurances by selecting Categories ''1'' through 11,'' and ''16.''

The state serving as the Applicant for Federal assistance for the Transit Account of its State Infrastructure Bank (SIB) program authorized by either section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, certifies and assures that the following requirements and conditions will be fulfilled pertaining to any project financed with Federal assistance derived from the Transit Account of the SIB:

A. The state organization serving as the Applicant (state) agrees and assures the agreement of the SIB and each recipient of Federal assistance derived from the Transit Account of the SIB within the state (subrecipient) that each Project financed with Federal assistance derived from the Transit Account will be administered in accordance with the:

(1) Applicable provisions of section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or of the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, and any further amendments thereto;

(2) Provisions of any applicable Federal guidance that may be issued;

(3) Terms and conditions of Department of Labor Certification(s) of Transit Employee Protective Arrangements that are required by Federal law or regulations;

(4) Provisions of FHWA and FTA cooperative agreement with the state to establish the state's SIB program; and

(5) Provisions of the FTA grant agreement with the state that obligating Federal assistance for the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that grant agreement will not apply if it conflicts with any provision of National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or section 1511 of TEA–21, as amended, 23 U.S.C. 181 note, and Federal guidance on SIBs, the provisions of the cooperative agreement establishing the SIB program within the state, or the text within the FTA grant agreement.

B. The state agrees to comply with and assures the compliance of the SIB and each subrecipient of assistance under the SIB with all applicable requirements for the SIB program, as those requirements may be amended from time and time. Pursuant to the requirements of subsection 1511(h)(2) of TEA–21, 23 U.S.C. 181 note, applicants for

assistance authorized by the state Infrastructure Bank Pilot Program agree that previous cooperative agreements entered into with states under section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, will be revised to comply with new requirements.

C. The state assures that the SIB will provide Federal assistance from its Transit Account only for transit capital projects eligible under section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note or under section 1511 of TEA–21, 23 U.S.C. 181 note, and that those projects will fulfill all requirements imposed on comparable capital transit projects financed by FTA.

D. The state understands that the total amount of funds to be awarded for a grant agreement will not be immediately available for draw down. Consequently, the state assures that it will limit the amount of Federal assistance it draws down for deposit in the SIB to amounts that do not exceed the limitations specified in the underlying grant agreement or the approved project budget for that grant agreement.

E. The state assures that each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized by Federal statute for use in the SIB, and to implement, manage, operate, and maintain the project and project property for which such assistance will support.

F. The state recognizes that the SIB, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications the state has signed. Having taken appropriate measures to secure the necessary compliance by the SIB, the state assures, on behalf of the SIB, that:

(1) The SIB has complied or will comply with all applicable civil rights requirements;

(2) The SIB has complied or will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs;

(3) The SIB will provide Federal assistance only to a subrecipient that is either a public or private entity recognized under state law as having the legal capability to contract with the state to carry out its proposed project;

(4) Before the SIB enters into an agreement with a subrecipient under which Federal assistance will be disbursed to the subrecipient, the subrecipient's project is included in the Statewide Transportation Improvement Program; all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located; a certification that an opportunity for a public hearing has been provided;

(5) The SIB will not provide Federal financial assistance for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until the required Federal environmental finding has been made. Moreover, the SIB will provide no financial assistance for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until the required Federal conformity finding has been made;

(6) Before the SIB provides Federal assistance for a transit project, each subrecipient will have complied with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project; and

(7) The SIB will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed, including specific provisions that any security or debt financing instrument the SIB may issue will contain an express statement that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

H. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications the state has signed. Having taken appropriate measures to secure the necessary compliance by the SIB and each subrecipient, the state assures, on behalf of each subrecipient, that each subrecipient has:

(1) Complied or will comply with all applicable civil rights requirements;

(2) Complied or will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs;

(3) Complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(4) Complied or will comply with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project;

(5) Complied or will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance;

(6) Complied with or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(7) Viewing its demand responsive service to the general public in its entirety, complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standard of equivalent service set forth in 40 CFR 37.77(c), if it purchases non-accessible vehicle for use in demand responsive service for the general public;

(8) Established or will establish a procurement system and conducted or will conduct its procurements in compliance with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue;

(9) Complied or will comply with the requirement that its project provides for the participation of private mass transportation companies to the maximum extent feasible;

(10) Paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(11) Complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(12) Complied or will comply with all nonprocurement suspension and debarment requirements;

(13) Complied with or will comply with all applicable bus testing requirements for new bus models;

(14) Complied with or will comply with all applicable pre-award and post-delivery review requirements;

(15) Complied with or will comply with all assurances FTA requires for projects involving real property;

(16) Complied with, or to the extent required by FTA, will comply with, applicable FTA Intelligent Transportation System (ITS) architecture requirements; and

(17) Complied with, or to the extent required by FTA will comply with, applicable anti-drug and alcohol program requirements.

I. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the SIB and its subrecipients, as well as the states, will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by the SIB and its subrecipients to assure compliance with applicable Federal requirements.

Selection and Signature Pages follow.

BILLING CODE 4910–57–M

Appendix A

FEDERAL FY 2002 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE
(Alternative to Electronic Filing)

Name of Applicant: _____

The Applicant agrees to comply with applicable requirements of Categories 1 - 16. ____
(The Applicant may make this selection in lieu of individual selections below.)
OR
The Applicant agrees to comply with the applicable requirements of the following Categories it has selected:

1. Certifications and Assurances Required of Each Applicant. ____

2. Lobbying Certification ____

3. Certification Pertaining to Effects on Private Mass Transportation Companies ____

4. Public Hearing Certification for a Project with Substantial Impacts ____

5. Certification for the Purchase of Rolling Stock ____

6. Bus Testing Certification. ____

7. Charter Service Agreement. ____

8. School Transportation Agreement. ____

9. Certification for Demand Responsive Service ____

10 Prevention of Alcohol Misuse and Prohibited Drug Use Certification ____

11 Certification Required for Interest and Other Financing Costs ____

12. Intelligent Transportation Systems Program Assurance ____

13. Certifications and Assurances for the Urbanized Area Formula Program, the Job Access and Reverse Commute Program, and the Clean Fuels Formula Program ____

14. Certifications and Assurances for the Elderly and Persons with Disabilities Program ____

15. Certifications and Assurances for the Nonurbanized Area Formula Program ____

16. Certifications and Assurances for the State Infrastructure Bank (SIB) Program ____

(Both sides of this Signature Page must be appropriately completed and signed as indicated.)

Appendix A

FEDERAL FISCAL YEAR 2002 FTA CERTIFICATIONS AND ASSURANCES

(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW I, _____ (name), on behalf of the Applicant, declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and administrative guidance required for each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2002.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2002.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with the Urbanized Area Formula Program, 49 U.S.C. 5307, and may apply to any other certification, assurance, or submission made in connection with any other program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature_____ Date: _____
Name_____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

for _____ (Name of Applicant)

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Signature_____ Date: _____
Name_____
Applicant's Attorney

Each Applicant for FTA financial assistance (except 49 U.S.C. 5312(b) assistance) and each FTA Grantee with an active capital or formula project must provide an Attorney's affirmation of the Applicant's legal capacity. The Applicant may enter its PIN in lieu of the electronic signature of its Attorney, provided the Applicant has on file this Affirmation of its Attorney in writing dated this Federal fiscal year.

[FR Doc. 01–32118 Filed 12–31–01; 8:45 am]
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Federal Register

Wednesday,

January 2, 2002

Part IV

Department of Veterans Affairs

38 CFR Parts 3, 17, and 21

Monetary Allowance Payments, Health Care, and Vocational Training for Certain Children of Vietnam Veterans; Proposed Rules

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK67

Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) adjudication regulations to provide for payment of a monetary allowance for an individual with disability from one or more covered birth defects who is a child of a woman Vietnam veteran and to provide for the identification of covered birth defects, to implement recent legislation. In addition, the proposed rule would amend the VA adjudication regulations affecting benefits for Vietnam veterans' children with spina bifida to reflect that legislation, to make conforming changes, and to remove unnecessary or obsolete provisions. Companion documents concerning the provision of health care (RIN 2900–AK88) and vocational training benefits (RIN 2900–AK90) for eligible children of Vietnam veterans are set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Comments must be received by VA on or before February 1, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK67.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 401 of the Veterans Benefits and Health Care Improvement Act of 2000, Public Law 106–419, amends chapter 18 of title 38, United States Code, effective December 1, 2001, to authorize VA to provide certain benefits, including a monthly monetary allowance, for children with covered birth defects who are the natural children of women veterans who served in the Republic of Vietnam during the Vietnam era. This document proposes to amend existing VA adjudication regulations and to add § 3.815 to title 38, Code of Federal Regulations, to implement this new authority.

Effective December 1, 2001, 38 U.S.C. 1823 provides that receipt of this allowance shall not affect the right of the child, or the right of any individual, based on the child's relationship to that individual, to receive any other benefit to which the child, or that individual, may be entitled under any law administered by VA, nor will the allowance be considered income or resources in determining eligibility for, or the amount of, benefits under any Federal or federally-assisted program. We propose to amend 38 CFR 3.261, 3.262, 3.263, 3.272, and 3.275 to reflect this statutory provision as it applies to VA's income-based benefit programs.

We also propose to amend 38 CFR 3.27, 3.29, 3.31, 3.105, 3.114, 3.158, 3.216, 3.403, 3.500, and 3.503 so that regulations applying to adjustment of benefit rates, rounding of dollar figures of the monthly payment, commencement of the period of payment, revision of decisions, mandatory disclosure of social security numbers, abandonment of claims, and effective date of the award and of reductions and discontinuances, apply to these benefits.

Further, we propose to make non-substantive changes to 38 CFR 3.814 concerning the monetary allowance for individuals with spina bifida to reflect section 401 of Public Law 106–419, to make conforming changes, and to remove unnecessary or obsolete provisions.

In addition, we propose to make changes for purposes of clarity in § 3.814 and in other provisions mentioned above.

Until December 1, 2001, 38 U.S.C. chapter 18 is titled ''Benefits for Children of Vietnam Veterans Who Are Born with Spina Bifida.'' It provides benefits for the children of Vietnam veterans on the basis of a report by the Institute of Medicine (IOM) of the National Academy of Sciences called ''Veterans and Agent Orange: Update 1996,'' in which the IOM noted what it considered ''limited/suggestive evidence of an association'' between herbicide exposure and spina bifida in the offspring of Vietnam veterans. Effective December 1, 2001, 38 U.S.C. chapter 18 is retitled ''Benefits for Children of Vietnam Veterans.'' Statutory provisions that have been in 38 U.S.C. chapter 18 concerning benefits for individuals with spina bifida who are children of Vietnam veterans are amended effective December 1, 2001, to be in subchapter I of chapter 18, renamed ''Children of Vietnam Veterans Born with Spina Bifida.'' Subchapter II is added effective December 1, 2001, to chapter 18 and is titled ''Children of Women Vietnam Veterans Born with Certain Birth Defects.'' Subchapter III is added effective December 1, 2001, to chapter 18 and is titled ''General Provisions.'' That new subchapter contains provisions applicable to both categories of individuals.

The new statutory provisions, primarily 38 U.S.C. 1815, authorize VA to provide a monetary allowance for an individual with disability resulting from one or more covered birth defects who is a child of a woman Vietnam veteran. The statute is based on the results of a comprehensive health study by VA of 8,280 women Vietnam-era veterans (half of whom served in the Republic of Vietnam and half of whom served elsewhere) that was mandated by Public Law 99–272. The study, completed in October 1998, and titled ''Women Vietnam Veterans Reproductive Outcomes Health Study'' (VA study), was conducted by the Environmental Epidemiology Service of the Veterans Health Administration of the Department of Veterans Affairs. For purposes of satisfying the basic statistical requirement of independence of observations (i.e., in this study one pregnancy per woman), the VA study selected the first pregnancy after entrance date to Vietnam service, for women Vietnam veterans, as the ''index pregnancy.'' For the non-Vietnam group, the index pregnancy was defined as the first pregnancy after July 4, 1965. The VA study defined ''likely'' birth defects as congenital anomalies and included structural, functional, metabolic, and hereditary defects. It excluded developmental disorders, perinatal complications, miscellaneous pediatric illnesses, and conditions that were not classifiable. A report of part of the VA study, ''Pregnancy Outcomes Among U.S. Women Vietnam Veterans'' (Pregnancy Outcomes report), was published in the American Journal of Industrial Medicine (38:447–454 (2000)).

As provided in 38 U.S.C. 1815(c), the amount of the monthly monetary allowance payable to an individual with disability resulting from covered birth defects will be: For the lowest level of disability (Level I), $100; for the lower intermediate level of disability (Level

II), the greater of $214 or the monthly amount payable under 38 U.S.C. 1805(b)(3) for the lowest level of disability prescribed for an individual with spina bifida who is the child of a Vietnam veteran; for the higher intermediate level of disability (Level III), the greater of $743 or the monthly amount payable under 38 U.S.C. 1805(b)(3) for the intermediate level; for the highest level of disability (Level IV), the greater of $1272 or the monthly amount payable under 38 U.S.C. 1805(b)(3) for the highest level of disability.

We propose to amend 38 CFR 3.27, ''Automatic adjustment of benefit rates'' to reflect the amendments to 38 U.S.C. chapter 18. Under the provisions of 38 U.S.C. 1805(b)(3) and 1815(d), these amounts are subject to adjustment under the provisions of 38 U.S.C. 5312, which provide for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 *et seq.*).

We propose to amend the provisions of 38 CFR 3.29, ''Rounding'' to apply to increases in the monthly monetary amounts payable under 38 U.S.C. 1815. Whenever rates are increased under the provisions of 38 U.S.C. 5312, the Secretary may, under section 5312(c)(2), round those rates in such manner as the Secretary considers equitable and appropriate. The Secretary has determined that it is equitable and that, for ease of administration, it is appropriate to round up rate increases concerning the covered birth defects monetary benefit, as they are for the spina bifida monetary benefits. The proposed rule will amend § 3.29 accordingly.

We also propose to revise 38 CFR 3.31, ''Commencement of the period of payment''; 38 CFR 3.114, ''Change of law or Department of Veterans Affairs issue''; and 38 CFR 3.216, ''Mandatory disclosure of social security numbers'' to reflect that these provisions also apply to an individual with covered birth defects who is the child of a woman Vietnam veteran. All these provisions reflect statutory requirements.

Where a change in disability level warrants a reduction of the monetary allowance under 38 U.S.C. 1805 for individuals with spina bifida, the provisions of 38 CFR 3.105(g) direct VA to notify the beneficiary of the proposed reduction, allow the beneficiary 60 days to present evidence showing that the reduction should not occur, and provide that in the absence of such additional evidence the reduction will be effective the last day of the month following 60 days from the date of the notice. The proposed rule would expand the procedures to make them applicable to proposed reduction or discontinuance of any monetary allowance under 38 U.S.C. chapter 18. This reflects statutory requirements.

The provisions of 38 CFR 3.158 concern the circumstances under which VA will consider a claim abandoned. In view of the similarity between this benefit and other monetary benefits which VA administers, and in order to maintain consistency with respect to the administration of these benefits, we propose to apply these provisions to the monetary monthly allowance for individuals with covered birth defects, and we are proposing to amend 38 CFR 3.158 accordingly.

We propose to amend 38 CFR 3.403 by adding a new paragraph (c) to state that an award of the monetary allowance under 38 U.S.C. 1815 to or for an individual with covered birth defects who is a child of a woman Vietnam veteran will be the later of date of claim (or date of birth if a claim is received within one year of that date), the date entitlement arose, or December 1, 2001. This reflects statutory requirements.

VA is also proposing to amend 38 CFR 3.503 to specify that any monetary allowance under 38 U.S.C. chapter 18 will terminate the last day of the month before the month in which the death of a beneficiary occurs. This reflects statutory requirements.

VA is proposing to remove § 3.814(b), which sets forth an obsolete version of the ''Application for Spina Bifida Benefits'' form. The Office of Management and Budget has approved a revised version of the form.

We propose to add a new 38 CFR 3.815 to implement the provisions of 38 U.S.C. 1811, 1812, 1815, and 1821, as well as other provisions of 38 U.S.C. chapter 18, subchapters II and III. While § 3.815 primarily contains provisions concerning payment of monetary benefits, some of the proposed provisions of § 3.815 (for example, concerning whether an individual has a ''covered birth defect'') also would be used to determine eligibility for health care under 38 U.S.C. 1813 and vocational training under 38 U.S.C. 1814. Companion documents concerning the provision of health care (RIN 2900–AK88) and vocational training (RIN 2900–AK90) for certain children of Vietnam veterans with covered birth defects or spina bifida are set forth in the Proposed Rules section of this issue of the **Federal Register**.

In accordance with the statutory framework, paragraph (a)(1) of proposed § 3.815 provides that VA will pay a monthly allowance, under subchapter II of 38 U.S.C. chapter 18, to or for an individual whose biological mother is or was a Vietnam veteran and who VA has determined to have disability resulting from one or more covered birth defects. Paragraph (a)(1) further provides that, except as provided in paragraph (a)(3) of that section, the amount of the monetary allowance will be based on the level of disability suffered by an individual as determined in accordance with the provisions of paragraph (e), which sets forth criteria for evaluating levels of disability suffered by individuals with covered birth defects. Paragraph (a)(2) provides that no monetary allowance will be provided under this section to an individual based on disability from a particular birth defect in any case where affirmative evidence establishes that the birth defect results from a cause other than the active military, naval, or air service of that veteran during the Vietnam era and that, in determining the level of disability, VA will not consider the particular defect in question. This will not prevent VA from paying a monetary allowance under subchapter II of 38 U.S.C. chapter 18 for any other birth defect for which affirmative evidence of another cause does not exist. We believe these provisions accord with the statutory intent of 38 U.S.C. 1812.

Paragraph (a)(3) of proposed § 3.815 provides that, in the case of an individual (as defined in § 3.815(c)(2)) whose only covered birth defect is spina bifida, a monetary allowance will be paid under § 3.814, and not under § 3.815, nor will the individual be evaluated for disability under § 3.815. Thus, the individual's disability would be evaluated under § 3.814 (''Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran'') and the monetary allowance would be paid under the terms of that section. In the case of an individual who has spina bifida and one or more additional covered birth defects, a monetary allowance will be paid under § 3.815 and the amount of the monetary allowance will be not less than the amount the individual would receive if his or her only covered birth defect were spina bifida. If, but for application of this paragraph, the monetary allowance payable to or for the individual would be based on an evaluation at Level I, II, or III, respectively, under § 3.814(d), the evaluation of the individual's level of disability under paragraph (e) of this section would be not less than Level II, III or, IV, respectively. These provisions

reflect statutory requirements under 38 U.S.C. 1824(a) and our interpretation that Congress intended that the provisions of 38 U.S.C. 1824(a) are solely to provide for nonduplication of benefits between subchapters I and II, and are not intended in any other way to reduce the amount of monetary allowance that would be payable under 38 U.S.C. chapter 18 for an individual with spina bifida.

Paragraph (b) of proposed § 3.815 states, in accord with the statute, that receipt of the monetary allowance under 38 U.S.C. chapter 18 will not affect the right of the individual with covered birth defects, or the right of any person based on the individual's relationship to that person, to receive any other benefit to which the individual, or that person, may be entitled under any law administered by VA.

Paragraph (c)(1) of proposed § 3.815 contains a definition of ''Vietnam veteran'' for purposes of that section. The term ''Vietnam veteran'' is defined to mean a person who performed active military, naval, or air service in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, without regard to the characterization of the person's service. This reflects the statutory provisions in 38 U.S.C. 1821(2) and 1821(3)(B). We also propose to provide for purposes of § 3.815 that ''service in the Republic of Vietnam'' includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam. This is consistent with the definition of *service in the Republic of Vietnam* that appears at 38 CFR 3.307(a)(6)(iii).

Paragraph (c)(2) of proposed § 3.815 defines ''individual'' for purposes of that section to mean a person, regardless of age or marital status, whose biological mother is or was a Vietnam veteran and who was conceived after the date on which the veteran first entered the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975. Although 38 U.S.C. chapter 18 uses the terms ''child'' and ''children,'' many of those entitled to this benefit are now adolescents or adults. This definition will make it clear that these regulations apply to eligible persons regardless of age. Paragraph (c)(2) also provides that to establish whether a person is the biological son or daughter of a Vietnam veteran, VA will require the types of evidence specified in 38 CFR 3.209 and 3.210.

A birth defect is defined by the March of Dimes organization as an abnormality of structure, function, or metabolism, whether genetically determined or a result of environmental influence during embryonic or fetal life (*http://www.modimes.org*). Similar definitions are used by other State, national, and international organizations. The VA study of women Vietnam veterans did not define the term ''birth defects'' but stated that it included structural, functional, metabolic, and hereditary defects. It also stated that the causes of most congenital anomalies are unknown and that a combination of genetic and environmental factors may contribute to 20–25% of anomalies.

In the VA study, ''likely'' birth defects, reported by women Vietnam veterans in their children, were divided by pediatricians who reviewed the mothers' descriptions of the defects into the following seven categories: chromosomal abnormality; multiple anomalies (except chromosomal and heritable genetic); isolated anomaly; congenital neoplasms; heritable genetic disease; undescribed isolated heart abnormality; and other poorly described defect (non-cardiac). The VA study stated that there is a notable lack of difference between the children of women Vietnam veterans and the children of women non-Vietnam veterans for classes of known genetic/heritable conditions (including congenital malignancies). In the children resulting from index pregnancies, there was one congenital malignancy in a child of a Vietnam veteran and one in a child of a non-Vietnam veteran; there were four cases of heritable genetic disease in each group of veterans; and there were three chromosomal abnormalities in children of Vietnam veterans and four in the children of non-Vietnam veterans. Thus, the VA study provides no evidence of an association between service in Vietnam and three of the seven categories (chromosomal abnormalities, congenital malignancies, and heritable genetic diseases). Since under 38 U.S.C. 1812(a)(1) VA has authority to identify birth defects of children of women Vietnam veterans as covered birth defects only if the birth defects ''are associated with the service of those veterans in the Republic of Vietnam during the Vietnam era,'' we believe it would not be appropriate to identify these three categories of birth defects as covered birth defects. Other conditions reported by the mother as birth defects that were something else included developmental disorders, such as autism, and miscellaneous pediatric conditions, such as asthma.

In addition, the statute specifically excludes familial disorders, birth-related injuries, and fetal or neonatal infirmities with well-established causes from the category of covered birth defects.

Therefore, we propose in paragraph (c)(3) of § 3.815 to define the term ''covered birth defect'' for purposes of that section to mean:

> [A]ny birth defect identified by VA as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, and that has resulted, or may result, in permanent physical or mental disability. However, the term *covered birth defect* does not include a condition due to a:
>
> (i) Familial disorder;
> (ii) Birth-related injury; or
> (iii) Fetal or neonatal infirmity with well-established causes.

We believe that this definition reflects the intent of Congress with respect to provision of benefits for individuals under 38 U.S.C. chapter 18, subchapters II and III.

In paragraph (d) of proposed § 3.815, VA lists some, but not all, specific conditions that VA would identify or would not identify as covered birth defects. Paragraph (d)(1) contains a list, based on the VA study, of some, but not all, conditions that VA would consider to be covered birth defects, unless a condition is familial in a particular case. Each of paragraphs (d)(2) through (d)(8) contains a non-exclusive list of certain conditions that, for different reasons, VA would not consider to be covered birth defects. Because of the vast number of possible birth defects, and the fact that many are sometimes familial and sometimes not (when they arise de novo, or anew, in a particular individual), it is not practical to develop an exclusive or definitive list in proposed § 3.815(d). For example, achondroplasia and Marfan syndrome are sometimes familial and sometimes not. We propose to include achondroplasia in the list of covered birth defects because 75% of cases are due to gene mutation (*www.med.jhu.edu/Greenberg.Center/achon.htm*) rather than being familial, but it will not be a covered birth defect in any case where it is determined to be familial. On the other hand, Marfan syndrome is familial in two-thirds to three-quarters of cases (*www.marfan.org*), so we propose to exclude it as a covered birth defect, unless there is no indication that it is familial in a particular family, in which case it would not be excluded as familial.

Proposed § 3.815(d)(1) states that covered birth defects include, but are not limited to, the following (but that if a birth defect is determined to be familial in a particular family, it would

not be a covered birth defect): achondroplasia, cleft lip and cleft palate, congenital heart disease, congenital talipes equinovarus (clubfoot), esophageal and intestinal atresia, Hallerman-Streiff syndrome, hip dysplasia, Hirschprung's disease (congenital megacolon), hydrocephalus due to aqueductal stenosis, hypospadias, imperforate anus, neural tube defects (including spina bifida, encephalocele, and anencephaly), Poland syndrome, pyloric stenosis, syndactyly (fused digits), tracheoesophageal fistula, undescended testicle, and Williams syndrome.

Familial, according to Dorland's Illustrated Medical Dictionary, 27th edition (1988), means occurring or affecting more members of a family than would be expected by chance. The category of familial disorders includes all heritable (that is, hereditary) genetic conditions, but not all genetic conditions, because a genetic mutation may arise for the first time during early development and not be hereditary. In that case, the parents would not have the genetic disorder, and the condition would not be familial.

Proposed § 3.815(d)(2) states generally that conditions that are familial disorders, including hereditary genetic conditions (as they are called in the VA study) are not covered birth defects. However, as proposed § 3.815(d)(2) also provides, if a birth defect is not familial in a particular family, VA would not consider it to be a familial disorder. (Thus, it would be a covered birth defect unless excluded under another provision of paragraph (d).) It states that familial disorders include, but are not limited to, the following, unless not familial in a particular family: albinism, alpha-antitrypsin deficiency, Crouzon syndrome, cystic fibrosis, Duchenne's muscular dystrophy, galactosemia, hemophilia, Huntington's disease, Hurler syndrome, Kartagener's syndrome (Primary Ciliary Dyskinesia), Marfan syndrome, neurofibromatosis, osteogenesis imperfecta, pectus excavatum, phenylketonuria, sickle cell disease, Tay-Sachs disease, thalassemia, and Wilson's disease (the VA study, The Merck Manual). These and other conditions, depending on the circumstances, may or may not be familial. For example, pectus excavatum is generally considered to be a familial birth defect but may also occur in the absence of a family history. Congenital blindness has some established causes, such as maternal rubella during pregnancy or metabolic disorders, but in other cases, it has no established cause and would be a covered birth defect. Similarly, congenital deafness may be familial or may be due to an unknown cause. Some types of hydrocephalus are due to maternal infection and some have no known cause. Whether the disease is familial or not will be reported in most cases in medical records containing a family history.

Proposed § 3.815(d)(3) states that congenital malignant neoplasms (referred to in the VA study as congenital malignancies) are not covered birth defects. It states that these include, but are not limited to, the following: medulloblastoma, neuroblastoma, retinoblastoma, teratoma, and Wilm's tumor (The Merck Manual (17th edition, 1999 *http://www.neonatology.org/ syllabus/ teratoma.html, http://cancer.med.upenn.edu/pdq_html/1/engl/ 100048.html,* and *http://cancernet.nci.nih.gov/clinpdq/pif.html*).

Proposed § 3.815(d)(4) states that chromosomal abnormalities are not covered birth defects. It states that these include, but are not limited to, the following: Down syndrome and other Trisomies, Fragile X syndrome, Klinefelter's syndrome, Turner syndrome (the VA study, The Merck Manual).

Proposed § 3.815(d)(5) states that conditions that are due to birth-related injury are not covered birth defects. It states that these conditions include, but are not limited to, the following: brain damage due to anoxia during or around the time of birth; cases of cerebral palsy due to birth trauma; facial nerve palsy or other peripheral nerve injury; fractured clavicle; and Horner's syndrome due to forceful manipulation during birth.

Proposed § 3.815(d)(6) states that conditions that are due to a fetal or neonatal infirmity with well-established causes or that are miscellaneous pediatric conditions are not covered birth defects. VA considers that these include, but are not limited to, the effects of maternal infection during pregnancy, such as rubella, toxoplasmosis, or syphilis, and include fetal alcohol syndrome or fetal effects of maternal drug use (known to result from maternal use of alcohol or drugs during pregnancy). Miscellaneous pediatric conditions are conditions which the Pregnancy Outcomes report discusses as ''unlikely birth defects.'' They were reported by the mother in telephone interviews as birth defects, but pediatricians determined them to be pediatric conditions rather than birth defects. Accordingly, proposed § 3.815(d)(6) states that the following are not covered birth defects: asthma and other allergies, hyaline membrane disease, maternal-infant blood incompatibility, neonatal infections, neonatal jaundice, post-infancy deafness/hearing impairment (occurring after the age of one year), prematurity, and refractive disorders of the eye (for example, farsightedness and astigmatism).

Proposed § 3.815(d)(7) states that developmental disorders are not covered birth defects. VA considers that the following, which are listed in proposed § 3.815(d)(7), are developmental disorders rather than birth defects: attention deficit disorder; autism; epilepsy diagnosed after infancy (after the age of one year); learning disorders; and mental retardation (unless part of a syndrome that is a covered birth defect) (the VA study, *http://www.autism-society.org/whatisautism/autism.html#causes,* and *http://www.cdc.gov/nceh/cddh/ddhome.htm).*

Proposed § 3.815(d)(8) states that conditions that do not result in permanent physical or mental disability are not covered birth defects. VA believes that these include, but are not limited to, the following, which are listed in proposed § 3.815(d)(8): conditions rendered non-disabling through treatment; congenital heart problems surgically corrected or resolved without disabling residuals; heart murmurs unassociated with a diagnosed cardiac abnormality; hemangiomas that have resolved with or without treatment; and scars (other than of the head, face, or neck) as the only residual of corrective surgery for birth defects.

Paragraph (h) of proposed § 3.815 provides that if a regional office is unclear in any case as to whether a condition is a covered birth defect it may refer the issue to the Director of the Compensation and Pension Service to make the determination as to whether a condition is a covered birth defect.

Paragraph (e) of proposed § 3.815 provides, in accordance with 38 U.S.C. 1815(a) and (b), that VA will determine the level of disability currently resulting, in combination, from an individual's covered birth defects and associated disabilities. It further provides that no monetary allowance will be payable under subchapter II of 38 U.S.C. chapter 18 if VA determines under this paragraph that an individual has no current disability resulting from the covered birth defects, unless VA determines that the provisions of paragraph (a)(3) of this section are for application. Also, as required by 38 U.S.C. 1815(b), paragraph (e) sets forth a schedule for rating disabilities resulting from covered birth defects at four levels of disability, identified as

Level I, Level II, Level III, and Level IV, with Level I having the lowest, and Level IV the highest, level of disability. The schedule also includes Level 0 when VA determines that an individual has one or more covered birth defects, but has no current disability resulting therefrom. Disability determinations would be based on an assessment of the effect on day-to-day functioning or the extent of disfigurement of the head, face, or neck due to one or more covered birth defects or associated disabilities. These proposed criteria are necessarily broad because of the array of potential disabilities affecting any body system or multiple systems and are designed to be applicable to the widest possible variety of disabilities. We propose that the functions to be considered in assessing limitation of daily activities be mobility (ability to stand and walk, including balance and coordination), manual dexterity, stamina, speech, hearing, vision (other than correctable refraction errors), memory, ability to concentrate, appropriateness of behavior, and urinary and fecal continence. While disfigurement does not necessarily limit any of these functions, although it may limit communication, it may, in our judgment, and based on our experience with disability assessment in veterans, be significantly disabling in and of itself, and we are therefore proposing to include it in the criteria. These are similar to the types of functional impairments described in literature pertaining to disabilities, for example, in Americans with Disabilities Act (ADA) documents, such as the Glossary of Common Characteristics and Limitations of Disabilities in ADA Handbook, Appendix IV and ADA Title III Regulations, and in a 1997 Institute of Medicine document, ''Enabling America: Assessing the Role of Rehabilitation Science and Engineering.''

We propose that Level I be assigned if the individual has residual physical or mental effects that only occasionally or intermittently limit or prevent some daily activities, or the individual has disfigurement or scarring of the head, face, or neck without gross distortion or gross asymmetry of any facial feature (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips). We propose that Level II be assigned if the individual has residual physical or mental effects that frequently or constantly limit or prevent some daily activities, but the individual is able to work or attend school, carry out most household chores, travel, and provide age-appropriate self-care such as eating, dressing, grooming, and carrying out personal hygiene, and communication, behavior, social interaction, and intellectual functioning are appropriate for age; or, the individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of one facial feature or one paired set of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips). We propose that Level III be assigned on one of four bases: if the individual has residual physical or mental effects that frequently or constantly limit or prevent most daily activities but the individual is able to provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene; the individual is unable to work or attend school, travel, or carry out household chores, or does so intermittently and with difficulty; the individual's communication, behavior, social interaction, and intellectual functioning are not entirely appropriate for age; or the individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of two facial features or two paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips). We propose that Level IV be assigned on one of three bases: if the individual has residual physical or mental effects that prevent age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene; communication, behavior, social interaction, and intellectual functioning are grossly inappropriate for age; or the individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of three facial features or three paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips). We believe these criteria will establish objective measures to identify discrete levels of disability, in accordance with the payment levels established by Congress that can be applied consistently.

Because VA medical facilities generally provide examination and care only to veterans, VA lacks pediatric examiners and pediatric specialists and some of the other specialists who might participate in the evaluation and care of individuals with covered birth defects. Therefore, paragraph (f) of proposed § 3.815 provides that VA may accept statements from private physicians, as well as examination reports from government or private institutions, for the purposes of determining whether an individual has a covered birth defect and rating claims from individuals with covered birth defects. It also provides that if they are adequate for such purposes, VA may make the determination and rating without further examination.

Paragraph (g) of proposed § 3.815 provides that VA will reconsider its determination that an individual has a covered birth defect and/or the level of disability due to covered birth defects whenever it receives medical evidence indicating that a change is warranted. In general, we believe that the severity of these conditions will be stable but that this provision provides a reasonable procedure for evaluating those that are not.

Paragraph (i) of proposed § 3.815 contains effective date provisions for awards, and increases, of the monetary allowance under 38 U.S.C. chapter 18, subchapter II. Paragraph (j) of proposed § 3.815 contains provisions concerning reductions and discontinuances of that monetary allowance. These reflect statutory requirements.

Comment Period

We are providing a comment period of 30 days for this proposed rule due to the December 1, 2001, effective date of the new benefit programs enacted by section 401 of Public Law 106–419, the statutory requirement for a final rule prior to that date, and the need to have a final rule as soon as possible that would enable identification of, and evaluation of disability from, covered birth defects in order to avoid delay in the commencement of those benefits.

Paperwork Reduction Act of 1995

This proposed rule would remove the approved information collection provisions contained in 38 CFR 3.814 as unnecessary or obsolete. The version of the ''Application for Spina Bifida Benefits'' form that is published in § 3.814(b) is no longer being used. The Office of Management and Budget (OMB) has approved a revision of the form, under the same OMB control number, 2900–0572. VA intends to seek from OMB approval under the Paperwork Reduction Act for further modifications to that form. This proposed rule does not contain provisions constituting new collections of information under the Paperwork Reduction Act. Any provisions that might otherwise require approval as a modification to an information collection would not affect 10 or more persons in a twelve-month period.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that these regulatory amendments would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers for benefits affected by this rule are 64.104, 64.109, 64.127, and 64.128. There are no Catalog of Federal Domestic Assistance program numbers for other benefits affected by this rule.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: October 26, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.27, paragraphs (c) and (d) are revised to read as follows:

§ 3.27 Automatic adjustment of benefit rates.

* * * * *

(c) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage the monthly allowance under 38 U.S.C. chapter 18.

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312)

(d) *Publishing requirements.* Increases in pension rates, parents' dependency and indemnity compensation rates and income limitation, and the monthly allowance under 38 U.S.C. chapter 18 made under this section shall be published in the **Federal Register**.

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312(c)(1))

3. In § 3.29, paragraph (c) is revised to read as follows:

§ 3.29 Rounding

* * * * *

(c) *Monthly rates under 38 U.S.C. chapter 18.* When increasing the monthly monetary allowance rates under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans, VA will round any resulting rate that is not an even dollar amount to the next higher dollar.

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312)

§ 3.31 [Amended]

4. Section 3.31 is amended by:

a. In the introductory text, removing ''the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida'' and adding, in its place, ''a monetary allowance under 38 U.S.C. chapter 18 for an individual''.

b. In paragraph (c)(4)(ii), removing ''the monetary allowance for children suffering from spina bifida'' and adding, in its place, ''a monetary allowance under 38 U.S.C. chapter 18''.

c. Revising the authority citation.

The revision reads as follows:

§ 3.31 Commencement of the period of payment.

* * * * *

(Authority: 38 U.S.C. 1822, 5111)

5. In § 3.105, paragraph (g) is revised to read as follows:

§ 3.105 Revision of decisions.

* * * * *

(g) *Reduction in evaluation—monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* Where a reduction or discontinuance of a monetary allowance currently being paid under 38 U.S.C. chapter 18 is considered warranted, VA will notify the beneficiary at his or her latest address of record of the proposed reduction, furnish detailed reasons therefor, and allow the beneficiary 60 days to present additional evidence to show that the monetary allowance should be continued at the present level. Unless otherwise provided in paragraph (i) of this section, if VA does not receive additional evidence within that period, it will take final rating action and reduce the award effective the last day of the month following 60 days from the date of notice to the beneficiary of the proposed reduction.

(Authority: 38 U.S.C. 1822, 5112(b)(6))

* * * * *

§ 3.114 [Amended]

6. Section 3.114 is amended by:

a. In the introductory text of paragraph (a), removing ''the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida'' each place it appears and adding, in its place, ''a monetary allowance under 38 U.S.C. chapter 18 for an individual''.

b. Revising the authority citation at the end of paragraph (a).

The revision reads as follows:

§ 3.114 Change of law or Department of Veterans Affairs issue.

* * * * *

(Authority: 38 U.S.C. 1822, 5110(g))

* * * * *

§ 3.158 [Amended]

7. In § 3.158, paragraphs (a) and (c) are amended by removing ''1805'' and adding, in its place, ''chapter 18''.

§ 3.216 [Amended]

8. Section 3.216 is amended by:

a. Removing ''or the monetary allowance for a child suffering from spina bifida who is a child of a Vietnam veteran under § 3.814 of this part'' and adding, in its place, ''a monetary allowance under 38 U.S.C. chapter 18''.

b. Revising the authority citation.

The revision reads as follows:

§ 3.216 Mandatory disclosure of social security numbers.

* * * * *

(Authority: 38 U.S.C. 1822, 5101(c))

* * * * *

9. In § 3.261, paragraph (a)(40) is revised to read as follows:

§ 3.261 Character of income; exclusions and estates.

* * * * *

(a) * * *

Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; old-law (veterans, surviving spouses and children)	Pension; Section 306 (veterans, surviving spouses and children)	See—
* * *	*	*	*	*	*
(40) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans (38 U.S.C. 1823(c)).	Excluded	Excluded	Excluded	Excluded	§ 3.262(y)

10. In § 3.262, paragraph (y) is revised to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(y) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* There shall be excluded from income computation any allowance paid under the provisions of 38 U.S.C. 18 to or for an individual who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

11. In § 3.263, paragraph (g) is revised to read as follows:

§ 3.263 Corpus of estate; net worth.

* * * * *

(g) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

12. In § 3.272, paragraph (u) is revised to read as follows:

§ 3.272 Exclusions from income.

* * * * *

(u) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* Any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

13. In § 3.275, paragraph (i) is revised to read as follows:

§ 3.275 Criteria for evaluating net worth.

* * * * *

(i) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

14. In § 3.403, paragraph (b) is revised and paragraph (c) is added, to read as follows:

§ 3.403 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. 1805 for an individual suffering from spina bifida who is a child of a Vietnam veteran.* An award of the monetary allowance under 38 U.S.C. 1805 to or for an individual suffering from spina bifida who is a child of a Vietnam veteran will be effective either date of birth if claim is received within one year of that date, or date of claim, but not earlier than October 1, 1997.

(Authority: 38 U.S.C. 1822, 5110; sec. 422(c), Pub. L. 104–204, 110 Stat. 2926)

(c) *Monetary allowance under 38 U.S.C. 1815 for an individual with covered birth defects who is a child of a woman Vietnam veteran.* Except as provided in § 3.114(a) or § 3.815(i), an award of the monetary allowance under 38 U.S.C. 1815 to or for an individual with one or more covered birth defects who is a child of a woman Vietnam veteran will be effective as of the date VA received the claim (or the date of birth if the claim is received within one year of that date), the date entitlement arose, or December 1, 2001, whichever is later.

(Authority: 38 U.S.C. 1815, 1822, 1824, 5110)

15. In § 3.503, paragraph (b) is revised to read as follows:

§ 3.503 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* The effective date of discontinuance of the monthly allowance under 38 U.S.C. chapter 18 will be the last day of the month before the month in which the death of the individual occurred.

(Authority: 38 U.S.C. 1822, 5112(b))

16. Section 3.814 is amended by:

a. Revising the section heading.

b. Adding a heading to paragraph (a).

c. In paragraph (a), revising the first sentence and, in the second sentence, removing ''other related individual'' and adding, in its place, ''related person''.

d. Removing and reserving paragraph (b).

e. In paragraph (c)(1), removing ''an individual'' and adding, in its place, ''a person'' and removing ''individual's'' and adding, in its place, ''person's''.

f. In paragraph (c)(2), removing ''§ .3.204(a)(1), VA shall'' and adding, in its place, ''§ 3.204(a)(1), VA will'' and by removing ''an individual's biological father or mother is or was'' and adding, in its place, ''a person is the biological son or daughter of''.

g. Removing designation ''(d)'' from paragraph (d)(1) and by adding a heading for paragraph (d).

h. Removing the authority citation at the end of paragraph (d).

i. In paragraph (e), removing ''children'' and adding, in its place, ''an individual''.

j. Revising the authority citation at the end of the section.

The revisions and additions read as follows:

§ 3.814 Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran.

(a) *Monthly monetary allowance.* VA will pay a monthly monetary allowance under subchapter I of 38 U.S.C. chapter 18, based upon the level of disability determined under the provisions of paragraph (d) of this section, to or for a person who VA has determined is an individual suffering from spina bifida whose biological mother or father is or was a Vietnam veteran. * * *

* * * * *

(d) *Disability evaluations.* * * *

* * * * *

(Authority: 38 U.S.C. 501, 1805, 1811, 1812, 1821, 1822, 1823, 1824, 5101, 5110, 5111, 5112)

17. Section 3.815 is added to read as follows:

§ 3.815 Monetary allowance under 38 U.S.C. chapter 18 for an individual with disability from covered birth defects whose biological mother is or was a Vietnam veteran; identification of covered birth defects.

(a) *Monthly monetary allowance.* (1) *General.* VA will pay a monthly monetary allowance under subchapter II of 38 U.S.C. chapter 18 to or for an individual whose biological mother is or was a Vietnam veteran and who VA has determined to have disability resulting from one or more covered birth defects. Except as provided in paragraph (a)(3) of this section, the amount of the monetary allowance paid will be based upon the level of such disability suffered by the individual, as determined in accordance with the provisions of paragraph (e) of this section.

(2) *Affirmative evidence of cause other than mother's service during Vietnam era.* No monetary allowance will be provided under this section based on a particular birth defect of an individual in any case where affirmative evidence establishes that the birth defect results from a cause other than the active military, naval, or air service of the individual's mother during the Vietnam era and, in determining the level of disability for an individual with more than one birth defect, the particular defect resulting from other causes will be excluded from consideration. This will not prevent VA from paying a monetary allowance under this section for other birth defects.

(3) *Nonduplication; spina bifida.* In the case of an individual whose only covered birth defect is spina bifida, a monetary allowance will be paid under § 3.814, and not under this section, nor will the individual be evaluated for disability under this section. In the case of an individual who has spina bifida and one or more additional covered birth defects, a monetary allowance will be paid under this section and the amount of the monetary allowance will be not less than the amount the individual would receive if his or her only covered birth defect were spina bifida. If, but for the individual's one or more additional covered birth defects, the monetary allowance payable to or for the individual would be based on an evaluation at Level I, II, or III, respectively, under § 3.814(d), the evaluation of the individual's level of disability under paragraph (e) of this section will be not less than Level II, III or, IV, respectively.

(b) *No effect on other VA benefits.* Receipt of a monetary allowance under 38 U.S.C. chapter 18 will not affect the right of the individual, or the right of any person based on the individual's relationship to that person, to receive any other benefit to which the individual, or that person, may be entitled under any law administered by VA.

(c) *Definitions.* (1) *Vietnam veteran.* For the purposes of this section, the term *Vietnam veteran* means a person who performed active military, naval, or air service in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, without regard to the characterization of the person's service. Service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) *Individual.* For the purposes of this section, the term *individual* means a person, regardless of age or marital status, whose biological mother is or was a Vietnam veteran and who was conceived after the date on which the veteran first entered the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975. Notwithstanding the provisions of § 3.204(a)(1), VA will require the types of evidence specified in §§ 3.209 and 3.210 sufficient to establish that a person is the biological son or daughter of a Vietnam veteran.

(3) *Covered birth defect.* For the purposes of this section the term *covered birth defect* means any birth defect identified by VA as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, and that has resulted, or may result, in permanent physical or mental disability. However, the term *covered birth defect* does not include a condition due to a:

(i) Familial disorder;
(ii) Birth-related injury; or
(iii) Fetal or neonatal infirmity with well-established causes.

(d) *Identification of covered birth defects.* All birth defects that are not excluded under the provisions of this paragraph are covered birth defects.

(1) Covered birth defects include, but are not limited to, the following (however, if a birth defect is determined to be familial in a particular family, it will not be a covered birth defect):

(i) Achondroplasia;
(ii) Cleft lip and cleft palate;
(iii) Congenital heart disease;
(iv) Congenital talipes equinovarus (clubfoot);
(v) Esophageal and intestinal atresia;
(vi) Hallerman-Streiff syndrome;
(vii) Hip dysplasia;
(viii) Hirschprung's disease (congenital megacolon);
(ix) Hydrocephalus due to aqueductal stenosis;
(x) Hypospadias;
(xi) Imperforate anus;
(xii) Neural tube defects (including spina bifida, encephalocele, and anencephaly);
(xiii) Poland syndrome;
(xiv) Pyloric stenosis;
(xv) Syndactyly (fused digits);
(xvi) Tracheoesophageal fistula;
(xvii) Undescended testicle; and
(xviii) Williams syndrome.

(2) Birth defects that are familial disorders, including hereditary genetic conditions, are not covered birth defects. Familial disorders include, but are not limited to, the following, unless the birth defect is not familial in a particular family:

(i) Albinism;
(ii) Alpha-antitrypsin deficiency;
(iii) Crouzon syndrome;
(iv) Cystic fibrosis;
(v) Duchenne's muscular dystrophy;
(vi) Galactosemia;
(vii) Hemophilia;
(viii) Huntington's disease;
(ix) Hurler syndrome;
(x) Kartagener's syndrome (Primary Ciliary Dyskinesia);
(xi) Marfan syndrome;
(xii) Neurofibromatosis;
(xiii) Osteogenesis imperfecta;
(xiv) Pectus excavatum;
(xv) Phenylketonuria;
(xvi) Sickle cell disease;
(xvii) Tay-Sachs disease;
(xviii) Thalassemia; and
(xix) Wilson's disease.

(3) Conditions that are congenital malignant neoplasms are not covered birth defects. These include, but are not limited to, the following:

(i) Medulloblastoma;
(ii) Neuroblastoma;
(iii) Retinoblastoma;
(iv) Teratoma; and
(v) Wilm's tumor.

(4) Conditions that are chromosomal disorders are not covered birth defects. These include, but are not limited to, the following:

(i) Down syndrome and other Trisomies;
(ii) Fragile X syndrome;
(iii) Klinefelter's syndrome; and
(iv) Turner's syndrome.

(5) Conditions that are due to birth-related injury are not covered birth defects. These include, but are not limited to, the following:

(i) Brain damage due to anoxia during or around time of birth;

(ii) Cerebral palsy due to birth trauma,
(iii) Facial nerve palsy or other peripheral nerve injury;
(iv) Fractured clavicle; and
(v) Horner's syndrome due to forceful manipulation during birth.

(6) Conditions that are due to a fetal or neonatal infirmity with well-established causes or that are miscellaneous pediatric conditions are not covered birth defects. These include, but are not limited to, the following:

(i) Asthma and other allergies;
(ii) Effects of maternal infection during pregnancy, including but not limited to, maternal rubella, toxoplasmosis, or syphilis;
(iii) Fetal alcohol syndrome or fetal effects of maternal drug use;
(iv) Hyaline membrane disease;
(v) Maternal-infant blood incompatibility;
(vi) Neonatal infections;
(vii) Neonatal jaundice;
(viii) Post-infancy deafness/hearing impairment (onset after the age of one year);
(ix) Prematurity; and
(x) Refractive disorders of the eye.

(7) Conditions that are developmental disorders are not covered birth defects. These include, but are not limited to, the following:

(i) Attention deficit disorder;
(ii) Autism;
(iii) Epilepsy diagnosed after infancy (after the age of one year);
(iv) Learning disorders; and
(v) Mental retardation (unless part of a syndrome that is a covered birth defect).

(8) Conditions that do not result in permanent physical or mental disability are not covered birth defects. These include, but are not limited to:

(i) Conditions rendered non-disabling through treatment;
(ii) Congenital heart problems surgically corrected or resolved without disabling residuals;
(iii) Heart murmurs unassociated with a diagnosed cardiac abnormality;
(iv) Hemangiomas that have resolved with or without treatment; and
(v) Scars (other than of the head, face, or neck) as the only residual of corrective surgery for birth defects.

(e) *Disability evaluations.* Whenever VA determines, upon receipt of competent medical evidence, that an individual has one or more covered birth defects, VA will determine the level of disability currently resulting, in combination, from the covered birth defects and associated disabilities. No monetary allowance will be payable under this section if VA determines under this paragraph that an individual has no current disability resulting from the covered birth defects, unless VA determines that the provisions of paragraph (a)(3) of this section are for application. Except as otherwise provided in paragraph (a)(3) of this section, VA will determine the level of disability as follows:

(1) *Levels of disability.*

(i) *Level 0.* The individual has no current disability resulting from covered birth defects.

(ii) *Level I.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that only occasionally or intermittently limit or prevent some daily activities; or

(B) The individual has disfigurement or scarring of the head, face, or neck without gross distortion or gross asymmetry of any facial feature (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(iii) *Level II.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that frequently or constantly limit or prevent some daily activities, but the individual is able to work or attend school, carry out most household chores, travel, and provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene, and communication, behavior, social interaction, and intellectual functioning are appropriate for age; or

(B) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of one facial feature or one paired set of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(iv) *Level III.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that frequently or constantly limit or prevent most daily activities, but the individual is able to provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene;

(B) The individual is unable to work or attend school, travel, or carry out household chores, or does so intermittently and with difficulty;

(C) The individual's communication, behavior, social interaction, and intellectual functioning are not entirely appropriate for age; or

(D) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of two facial features or two paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(v) *Level IV.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that prevent age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene;

(B) The individual's communication, behavior, social interaction, and intellectual functioning are grossly inappropriate for age; or

(C) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of three facial features or three paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(2) *Assessing limitation of daily activities.* Physical or mental effects on the following functions are to be considered in assessing limitation of daily activities:

(i) Mobility (ability to stand and walk, including balance and coordination);
(ii) Manual dexterity;
(iii) Stamina;
(iv) Speech;
(v) Hearing;
(vi) Vision (other than correctable refraction errors);
(vii) Memory;
(viii) Ability to concentrate;
(ix) Appropriateness of behavior; and
(x) Urinary and fecal continence.

(f) *Information for determining whether individuals have covered birth defects and rating disability levels.* (1) VA may accept statements from private physicians, or examination reports from government or private institutions, for the purposes of determining whether an individual has a covered birth defect and for rating claims for covered birth defects. If they are adequate for such purposes, VA may make the determination and rating without further examination. In the absence of adequate information, VA may schedule examinations for the purpose of determining whether an individual has a covered birth defect and/or assessing the level of disability.

(2) Except in accordance with paragraph (a)(3) of this section, VA will not pay a monthly monetary allowance unless or until VA is able to obtain medical evidence adequate to determine that an individual has a covered birth defect and adequate to assess the level of disability due to covered birth defects.

(g) *Redeterminations.* VA will reassess a determination under this section whenever it receives evidence indicating that a change is warranted.

(h) *Referrals.* If a regional office is unclear in any case as to whether a condition is a covered birth defect, it may refer the issue to the Director of the Compensation and Pension Service for determination.

(i) *Effective dates.* Except as provided in § 3.114(a) or paragraph (i)(1) or (2) of this section, VA will award the monetary allowance under subchapter II of 38 U.S.C. chapter 18, for an individual with disability resulting from one or more covered birth defects, based on an original claim, a claim reopened after final disallowance, or a claim for increase, as of the date VA received the claim (or the date of birth if the claim is received within one year of that date), the date entitlement arose, or December 1, 2001, whichever is later. Subject to the condition that no benefits may be paid for any period prior to December 1, 2001:

(1) VA will increase benefits as of the earliest date the evidence establishes that the level of severity increased, but only if the beneficiary applies for an increase within one year of that date.

(2) If a claimant reopens a previously disallowed claim based on corrected military records, VA will award the benefit from the latest of the following dates: the date the veteran or beneficiary applied for a correction of the military records; the date the disallowed claim was filed; or, the date one year before the date of receipt of the reopened claim.

(j) *Reductions and discontinuances.* VA will generally reduce or discontinue awards under subchapter II of 38 U.S.C. chapter 18 according to the facts found except as provided in §§ 3.105 and 3.114(b).

(1) If benefits were paid erroneously because of beneficiary error, VA will reduce or discontinue benefits as of the effective date of the erroneous award.

(2) If benefits were paid erroneously because of administrative error, VA will reduce or discontinue benefits as of the date of last payment.

(Authority: 38 U.S.C. 501, 1811, 1812, 1813, 1814, 1815, 1816, 1821, 1822, 1823, 1824, 5101, 5110, 5111, 5112)

[FR Doc. 01–31673 Filed 12–31–01; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK88

Health Care for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish regulations regarding health care benefits for women Vietnam veterans' children with covered birth defects. It would revise the current regulations regarding health care for Vietnam veterans' children suffering from spina bifida to also encompass health care for women Vietnam veterans' children with certain other birth defects. This is necessary to provide health care for such children in accordance with recently enacted legislation. The revisions would also reduce the requirements for preauthorization, reflect changes in organizational and personnel titles, revise contact information for the VHA Health Administration Center, and make nonsubstantive changes for purposes of clarity. Companion documents entitled ''Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects'' (RIN 2900–AK67) and ''Vocational Training for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida'' (RIN 2900–AK90) are set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Comments must be received by VA on or before February 1, 2002, except that comments on the information collection provisions in this document must be received on or before March 4, 2002.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Room 1154, 810 Vermont Ave., NW, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK88.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). In addition, see the Paperwork Reduction Act heading under the **SUPPLEMENTARY INFORMATION** section of this preamble regarding submission of comments on the information collection provisions.

FOR FURTHER INFORMATION CONTACT: Susan Schmetzer, Chief, Policy & Compliance Division, VHA Health Administration Center, Department of Veterans Affairs, P.O. Box 65020, Denver, CO 80206, telephone (303) 331–7552.

SUPPLEMENTARY INFORMATION: Prior to the enactment of Public Law 106–419 on November 1, 2000, the provisions of 38 U.S.C. chapter 18 only concerned benefits for children with spina bifida who were born to Vietnam veterans. Effective December 1, 2001, section 401 of Public Law 106–419 amends 38 U.S.C. chapter 18 to add benefits for women Vietnam veterans' children with certain birth defects (referred to below as ''covered birth defects'').

As amended, 38 U.S.C. chapter 18 provides for three separate types of benefits for women Vietnam veterans' children who suffer from covered birth defects as well as for Vietnam veterans' children who suffer from spina bifida: (1) Monthly monetary allowances for various disability levels; (2) provision of health care needed for the child's spina bifida or covered birth defects; and (3) provision of vocational training and rehabilitation.

This document proposes to amend VA's ''Medical'' regulations (38 CFR part 17) by revising the regulations in §§ 17.900 through 17.905 concerning the provision of health care. These regulations currently only concern the provision of health care for Vietnam veterans' children with spina bifida. This document proposes to revise the regulations by adding women Vietnam veterans' children with covered birth defects to the existing regulatory framework. The revisions would also reduce the requirements for preauthorization, reflect changes in organizational and personnel titles, revise contact information for the VHA Health Administration Center, and make nonsubstantive changes for purposes of clarity. As the proposed rule provides, the mailing address for the VHA Health Administration Center for spina bifida is P.O. Box 65025, Denver, CO 80206–9025 and for covered birth defects is P.O. Box 469027, Denver, CO 80246–9027.

As a condition of eligibility for the provision of health care for women Vietnam veterans' children with covered birth defects, it is proposed that the child must be an *individual* determined to have a *covered birth defect* under 38 CFR 3.815. (Definitions of the terms *individual* and *covered birth defect* and provisions concerning

identification of covered birth defects are included in proposed § 3.815 set forth in the companion document concerning monetary allowances and identification of covered birth defects (RIN 2900–AK67) published in the Proposed Rules section of this issue of the **Federal Register**.)

Consistent with the authorizing legislation, a note to the proposed rule explains that the proposed provisions are not intended to be a comprehensive insurance plan and do not cover health care unrelated to spina bifida and covered birth defects.

The statutory provisions state that the Secretary may provide health care directly or by contract or other arrangement with any health care provider. VA proposes to contract or arrange for provision of covered health care only through approved health care providers. In this regard, it is proposed that such health care providers be only those currently approved, for the services provided, by the Center for Medicare and Medicaid Services (CMS), Department of Defense (DoD) TRICARE program, Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), or Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or currently approved under a license or certificate issued by a governmental entity with jurisdiction. This appears to provide reasonable assurance that individuals providing health care for these children under this authority are qualified to do so. These provisions already apply to the regulations concerning the provision of health care for Vietnam veterans' children with spina bifida, except that they reflect a title change in the Department of Defense program; clarify that approved health care providers include those issued a license or certificate by a governmental entity with jurisdiction; and clarify the definition of *respite care* by stating that the care must be furnished by an approved health care provider.

The proposal includes a note clarifying when VA is the exclusive payer for health care provided. The note states that VA would provide payment under the proposal only for health care relating to spina bifida or covered birth defects (under the definitions of *spina bifida* and *covered birth defects* in proposed § 17.900, this includes complications or medical conditions that according to the scientific literature are associated with spina bifida or with the covered birth defects). The note also states that VA is the exclusive payer for services authorized under this proposal regardless of any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. The note further states that any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to spina bifida or covered birth defects.

It is proposed as a condition of payment that preauthorization from a benefits advisor of the VHA Health Administration Center be required, in accordance with prescribed procedures, for rental or purchase of durable medical equipment with a total rental or purchase price in excess of $300, respectively; transplantation services; mental health services; training; substance abuse treatment; dental services; and travel (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants) other than mileage at the General Services Administration rate for privately owned automobiles. This will help VA provide necessary care under its statutory authority. Except for the following changes these preauthorization provisions already apply to children with spina bifida. The proposal would remove the requirement for preauthorization related to case management, home care, and respite care. The VHA Health Administration Center's experience has found that case management, home care, and respite care are approved in the vast majority of cases and review of these services prior to their provision has not resulted in a change to the overall outcome of care or expenses. Preauthorization would continue to be required for the rental or purchase of durable medical equipment, however, it is proposed that it not be required for the rental or purchase of equipment with a total rental or purchase price of $300 or less, respectively. The VHA Health Administration Center's experience has shown that requiring preauthorization for durable medical equipment with a rental or purchase price of $300 or less is not cost-effective for the government. The proposal also reflects a change in title of VHA Health Administration Center personnel.

Under the proposal, payment to approved health care providers would be made using the methodology already established for the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) (see 38 CFR 17.270 *et seq.*). We believe this methodology based on Medicare and DoD principles would result in fair payments and allow VA to utilize a payment mechanism already in place. Use of the CHAMPVA payment methodology is currently a requirement under the regulations for spina bifida health care.

It is proposed that claims from approved health care providers be submitted to the VHA Health Administration Center for payment and that the claims contain specified information. The Center already provides claims processing services for eligible veterans' dependents under CHAMPVA and the spina bifida program. The specified information is necessary to make determinations concerning authorization for payment.

The proposal also includes time frames for submission of claims to ensure an orderly and efficient payment system. It is proposed that claims must be filed no later than one year after the date of service; or in the case of inpatient care, one year after the date of discharge; or in the case of retroactive approval for health care, 180 days following beneficiary notification of eligibility. Further, it is proposed that in response to a request for payment, VA will provide an explanation of benefits to ensure that VA determinations of payments would be understood by claimants. This already applies to spina bifida health care and is consistent with other VA health care programs for veterans' dependents.

The proposal sets forth a review and appeal process concerning determinations relating to the provision of health care or payment. A note states that the final decision of the VHA Health Administration Center Director, concerning provision of health care or payment, will inform the claimant of further appellate rights for an appeal to the Board of Veterans' Appeals. This already applies to spina bifida health care, except that the review and appeal process reflects a change in title of an organizational unit.

Consistent with the statutory scheme, we propose that payments made will constitute payment in full. Accordingly, providers will not be permitted to bill the patient for charges in excess of the VA-determined allowable amount. The proposed rule also includes a specific list of items that would be excluded from payment since we believe they were not intended to be subject to payment. This already applies to spina bifida health care.

The proposal includes provisions concerning medical records. It is proposed that copies of medical records generated outside VA that relate to activities for which VA is asked to provide payment or that VA determines are necessary to adjudicate claims under

§§ 17.900 through 17.905 must be provided to VA at no charge when requested by VA. This already applies to spina bifida health care.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), this proposed rule contains information collections in proposed 38 CFR 17.902 through 17.904. These sections concern the provision of certain health care for Vietnam veterans' children with spina bifida or children born with certain other birth defects to women Vietnam veterans. VA is proposing to revise the information collection currently approved by the Office of Management and Budget (OMB) under control number 2900–0578 to substitute the information collections in proposed 38 CFR 17.902 through 17.904 for the information collections currently approved for those sections of the regulations. Accordingly, under section 3507(d) of the Act VA has submitted a copy of this rulemaking action to OMB for its review.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collections of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1154, Washington, DC 20420; by fax to (202) 273–9289; or by e-mail to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AK88.'' All written comments to VA will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

Preauthorization—Section 17.902

Title: Preauthorization for Provision of Health Care for Certain Children of Vietnam Veterans.

Summary of collection of information: The provisions of proposed 38 CFR 17.902 would require individuals to submit to a benefits advisor of the VHA Health Administration Center a preauthorization request for health care consisting of rental or purchase of durable medical equipment with a rental or purchase price in excess of $300, respectively; mental health services; training; substance abuse treatment; dental services; transplantation services; or travel (other than mileage at the General Services Administration rate for privately owned automobiles). The preauthorization request would contain the child's name and Social Security number; the veteran's name and Social Security number; the type of service requested; the medical justification; the estimated cost; and the name, address, and telephone number of the provider.

Type of review: Revision of currently approved collection.

Description of need for information and proposed use of information: Such information would be necessary to make preauthorization determinations in accordance with proposed 38 CFR 17.902.

Description of likely respondents: Individuals seeking provision of health care to certain children of Vietnam veterans.

Estimated number of respondents: 400.

Estimated frequency of responses: Occasionally.

Estimated total annual reporting and recordkeeping burden: 200 hours.

Estimated burden per respondent: 30 minutes (2 × 15 minutes).

Payment of Claims—Section 17.903

Title: Payment of Claims for Provision of Health Care for Certain Children of Vietnam Veterans.

Summary of collection of information: The provisions of proposed 38 CFR 17.903 would require that, as a condition of payment, claims from ''approved health care providers'' for health care provided under 38 CFR 17.900 through 17.905 must include the following information, as appropriate: with respect to patient identification information: the patient's full name, Social Security number, address, and date of birth; with respect to provider identification information (inpatient and outpatient services): full name and address (such as hospital or physician), remittance address, address where services were rendered, individual provider's professional status (M.D., Ph.D., R.N., etc.), and provider tax identification number (TIN) or Social Security number; with respect to patient treatment information (longterm care or institutional services): dates of service (specific and inclusive); summary level itemization (by revenue code); dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed; principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization; all secondary diagnoses; all procedures performed; discharge status of the patient; and institution's Medicare provider number; with respect to patient treatment information for all other health care providers and ancillary outpatient services: diagnosis, procedure code for each procedure, service, or supply for each date of service, and individual billed charge for each procedure, service, or supply for each date of service; with respect to prescription drugs and medicines: name and address of pharmacy where drug was dispensed, name of drug, National Drug Code (NDC) for drug provided, strength, quantity, date dispensed, and pharmacy receipt for each drug dispensed.

Type of review: Revision of currently approved collection.

Description of need for information and proposed use of information: Such information would be necessary to make payment determinations in accordance with proposed 38 CFR 17.903.

Description of likely respondents: Individuals seeking payment for provision of health care for certain children of Vietnam veterans.

Estimated number of respondents: 3,000.

Estimated frequency of responses: 10.

Estimated total annual reporting and recordkeeping burden: 3,000 hours.

Estimated burden per respondent: 60 minutes (10 × 6 minutes).

Review and Appeal Process—Section 17.904

Title: Review and Appeal Process Regarding Provision of Health Care or Payment Relating to Provision of Health Care for Certain Children of Vietnam Veterans.

Summary of collection of information: The provisions of proposed 38 CFR 17.904 would establish a review process regarding disagreements by a Vietnam veteran's child or representative with a determination concerning authorization of health care or a health care provider's disagreement with a determination regarding payment. The person or entity requesting reconsideration of such determination would be required to submit such request to the VHA Health Administration Center (Attention: Chief, Benefit and Provider Services), in writing within one year of the date of initial determination. The request must state why the decision is in error and include any new and relevant information not previously considered. After reviewing the matter, a benefits

advisor would issue a written determination to the person or entity seeking reconsideration. If such person or entity remains dissatisfied with the determination, the person or entity would be permitted to make a written request for review by the Director, VHA Health Administration Center.

Type of review: Revision of currently approved collection.

Description of need for information and proposed use of information: The information proposed to be collected under § 17.904 appears to be necessary to make review and appeal determinations.

Description of likely respondents: Beneficiaries and providers disagreeing with determinations regarding covered services and benefits.

Estimated number of respondents: 200.

Estimated frequency of responses: 3.

Estimated total annual reporting and recordkeeping burden: 200 hours.

Estimated burden per respondent: 60 minutes (3 × 20 minutes).

The Department considers comments by the public on proposed collections of information in—

• Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

• Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

• Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of the collections of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

Comment Period

We are providing, except for comments on the information collection provisions, a comment period of 30 days for this proposed rule due to the December 1, 2001, effective date of the new benefit programs enacted by section 401 of Public Law 106–419, the statutory requirement for a final rule prior to that date, and the need to have a final rule as soon as possible in order to avoid delay in the commencement of those benefits. We are providing for the information collections in this document a 60-day comment period pursuant to the Paperwork Reduction Act.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of the rule would not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. It is estimated that there are only a total of 1200 Vietnam veterans' children who suffer from spina bifida and women Vietnam veterans' children who suffer from covered birth defects. They are widely geographically diverse and the health care provided to them would not have a significant impact on any small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this document is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance program numbers for the programs affected by this document.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: October 26, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 17 is proposed to be amended as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501(a), 1721, unless otherwise noted.

2. In part 17, the undesignated center heading immediately preceding § 17.900 and §§ 17.900 through 17.905 are revised to read as follows:

Health Care Benefits for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

§ 17.900 Definitions.

For purposes of §§ 17.900 through 17.905—

Approved health care provider means a health care provider currently approved by the Center for Medicare and Medicaid Services (CMS), Department of Defense TRICARE Program, Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Joint Commission on Accreditation of Health Care Organizations (JCAHO), or currently approved for providing health care under a license or certificate issued by a governmental entity with jurisdiction. An entity or individual will be deemed to be an approved health care provider only when acting within the scope of the approval, license, or certificate.

Child for purposes of spina bifida means the same as *individual* as defined at § 3.814(c)(2) or § 3.815(c)(2) of this title and for purposes of covered birth defects means the same as *individual* as defined at § 3.815(c)(2) of this title.

Covered birth defects means the same as defined at § 3.815(c)(3) of this title and also includes complications or medical conditions that are associated with the covered birth defects according to the scientific literature.

Habilitative and rehabilitative care means such professional, counseling, and guidance services and such treatment programs (other than vocational training under 38 U.S.C. 1804 or 1814) as are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of a disabled person.

Health care means home care, hospital care, nursing home care, outpatient care, preventive care,

habilitative and rehabilitative care, case management, and respite care; and includes the training of appropriate members of a child's family or household in the care of the child; and the provision of such pharmaceuticals, supplies (including continence-related supplies such as catheters, pads, and diapers), equipment (including durable medical equipment), devices, appliances, assistive technology, direct transportation costs to and from approved health care providers (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants), and other materials as the Secretary determines necessary.

Health care provider means any entity or individual that furnishes health care, including specialized clinics, health care plans, insurers, organizations, and institutions.

Home care means medical care, habilitative and rehabilitative care, preventive health services, and health-related services furnished to a child in the child's home or other place of residence.

Hospital care means care and treatment furnished to a child who has been admitted to a hospital as a patient.

Nursing home care means care and treatment furnished to a child who has been admitted to a nursing home as a resident.

Outpatient care means care and treatment, including preventive health services, furnished to a child other than hospital care or nursing home care.

Preventive care means care and treatment furnished to prevent disability or illness, including periodic examinations, immunizations, patient health education, and such other services as the Secretary determines necessary to provide effective and economical preventive health care.

Respite care means care furnished by an approved health care provider on an intermittent basis for a limited period to an individual who resides primarily in a private residence when such care will help the individual continue residing in such private residence.

Spina bifida means all forms and manifestations of spina bifida except spina bifida occulta (this includes complications or medical conditions that are associated with spina bifida according to the scientific literature).

Vietnam veteran for purposes of spina bifida means the same as defined at § 3.814(c)(1) or § 3.815(c)(1) of this title and for purposes of covered birth defects means the same as defined at § 3.815(c)(1) of this title.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

§ 17.901 Provision of health care.

(a) *Spina bifida.* VA will provide a Vietnam veteran's child who has been determined under § 3.814 or § 3.815 of this title to suffer from spina bifida with such health care as the Secretary determines is needed by the child for spina bifida. VA may inform spina bifida patients, parents, or guardians that health care may be available at not-for-profit charitable entities.

(b) *Covered birth defects.* VA will provide a woman Vietnam veteran's child who has been determined under § 3.815 of this title to suffer from spina bifida or other covered birth defects with such health care as the Secretary determines is needed by the child for the covered birth defects. However, if VA has determined for a particular covered birth defect that § 3.815(a)(2) of this title applies (concerning affirmative evidence of cause other than the mother's service during the Vietnam era), no benefits or assistance will be provided under this section with respect to that particular birth defect.

(c) *Providers of care.* Health care provided under this section will be provided directly by VA, by contract with an approved health care provider, or by other arrangement with an approved health care provider.

(d) *Submission of information.* For purposes of §§ 17.900 through 17.905:

(1) The telephone number of the VHA Health Administration Center is (888) 820–1756;

(2) The facsimile number of the VHA Health Administration Center is (303) 331–7807;

(3) The hand-delivery address of the VHA Health Administration Center is 300 S. Jackson Street, Denver, CO 80209; and

(4) The mailing address of the VHA Health Administration Center—

(i) For spina bifida is P.O. Box 65025, Denver, CO 80206–9025; and

(ii) For covered birth defects is P.O. Box 469027, Denver, CO 80246–9027.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

Note to § 17.901: This is not intended to be a comprehensive insurance plan and does not cover health care unrelated to spina bifida or unrelated to covered birth defects. VA is the exclusive payer for services paid under §§ 17.900 through 17.905 regardless of any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. Any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to spina bifida or covered birth defects.

§ 17.902 Preauthorization.

(a) Preauthorization from a benefits advisor of the VHA Health Administration Center is required for the following services or benefits under §§ 17.900 through 17.905: rental or purchase of durable medical equipment with a total rental or purchase price in excess of $300, respectively; transplantation services; mental health services; training; substance abuse treatment; dental services; and travel (other than mileage at the General Services Administration rate for privately owned automobiles). Authorization will only be given in those cases where there is a demonstrated medical need related to the spina bifida or covered birth defects. Requests for provision of health care requiring preauthorization shall be made to the VHA Health Administration Center and may be made by telephone, facsimile, mail, or hand delivery. The application must contain the following:

(1) Name of child,

(2) Child's Social Security number,

(3) Name of veteran,

(4) Veteran's Social Security number,

(5) Type of service requested,

(6) Medical justification,

(7) Estimated cost, and

(8) Name, address, and telephone number of provider.

(b) Notwithstanding the provisions of paragraph (a) of this section, preauthorization is not required for a condition for which failure to receive immediate treatment poses a serious threat to life or health. Such emergency care should be reported by telephone to the VHA Health Administration Center within 72 hours of the emergency.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

§ 17.903 Payment.

(a)(1) Payment for services or benefits under §§ 17.900 through 17.905 will be determined utilizing the same payment methodologies as provided for under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) (see § 17.270).

(2) As a condition of payment, the services must have occurred:

(i) For spina bifida, on or after October 1, 1997, and must have occurred on or after the date the child was determined eligible for benefits under § 3.814 of this title.

(ii) For covered birth defects, on or after December 1, 2001, and must have occurred on or after the date the child was determined eligible for benefits under § 3.815 of this title.

(3) Claims from approved health care providers must be filed with the VHA Health Administration Center in writing

(facsimile, mail, hand delivery, or electronically) no later than:

(i) One year after the date of service; or

(ii) In the case of inpatient care, one year after the date of discharge; or

(iii) In the case of retroactive approval for health care, 180 days following beneficiary notification of eligibility.

(4) Claims for health care provided under the provisions of §§ 17.900 through 17.905 must contain, as appropriate, the information set forth in paragraphs (a)(4)(i) through (a)(4)(v) of this section.

(i) Patient identification information:

(A) Full name,

(B) Address,

(C) Date of birth, and

(D) Social Security number.

(ii) Provider identification information (inpatient and outpatient services):

(A) Full name and address (such as hospital or physician),

(B) Remittance address,

(C) Address where services were rendered,

(D) Individual provider's professional status (M.D., Ph.D., R.N., etc.), and

(E) Provider tax identification number (TIN) or Social Security number.

(iii) Patient treatment information (long-term care or institutional services):

(A) Dates of service (specific and inclusive),

(B) Summary level itemization (by revenue code),

(C) Dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed,

(D) Principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization,

(E) All secondary diagnoses,

(F) All procedures performed,

(G) Discharge status of the patient, and

(H) Institution's Medicare provider number.

(iv) Patient treatment information for all other health care providers and ancillary outpatient services such as durable medical equipment, medical requisites, and independent laboratories:

(A) Diagnosis,

(B) Procedure code for each procedure, service, or supply for each date of service, and

(C) Individual billed charge for each procedure, service, or supply for each date of service.

(v) Prescription drugs and medicines and pharmacy supplies:

(A) Name and address of pharmacy where drug was dispensed,

(B) Name of drug,

(C) National Drug Code (NDC) for drug provided,

(D) Strength,

(E) Quantity,

(F) Date dispensed,

(G) Pharmacy receipt for each drug dispensed (including billed charge), and

(H) Diagnosis for which each drug is prescribed.

(b) Health care payment will be provided in accordance with the provisions of §§ 17.900 through 17.905. However, the following are specifically excluded from payment:

(1) Care as part of a grant study or research program,

(2) Care considered experimental or investigational,

(3) Drugs not approved by the U.S. Food and Drug Administration for commercial marketing,

(4) Services, procedures, or supplies for which the beneficiary has no legal obligation to pay, such as services obtained at a health fair,

(5) Services provided outside the scope of the provider's license or certification, and

(6) Services rendered by providers suspended or sanctioned by a Federal agency.

(c) Payments made in accordance with the provisions of §§ 17.900 through 17.905 shall constitute payment in full. Accordingly, the health care provider or agent for the health care provider may not impose any additional charge for any services for which payment is made by VA.

(d) Explanation of benefits (EOB). When a claim under the provisions of §§ 17.900 through 17.905 is adjudicated, an EOB will be sent to the beneficiary or guardian and the provider. The EOB provides, at a minimum, the following information:

(1) Name and address of recipient,

(2) Description of services and/or supplies provided,

(3) Dates of services or supplies provided,

(4) Amount billed,

(5) Determined allowable amount,

(6) To whom payment, if any, was made, and

(7) Reasons for denial (if applicable).

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

§ 17.904 Review and appeal process.

For purposes of §§ 17.900 through 17.905, if a health care provider, child, or representative disagrees with a determination concerning provision of health care or with a determination concerning payment, the person or entity may request reconsideration. Such request must be submitted in writing (by facsimile, mail, or hand delivery) within one year of the date of the initial determination to the VHA Health Administration Center (Attention: Chief, Benefit and Provider Services). The request must state why it is believed that the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for dispute will be returned to the sender without further consideration. After reviewing the matter, including any relevant supporting documentation, a benefits advisor will issue a written determination (with a statement of findings and reasons) to the person or entity seeking reconsideration that affirms, reverses, or modifies the previous decision. If the person or entity seeking reconsideration is still dissatisfied, within 90 days of the date of the decision he or she may submit in writing (by facsimile, mail, or hand delivery) to the VHA Health Administration Center (Attention: Director) a request for review by the Director, VHA Health Administration Center. The Director will review the claim and any relevant supporting documentation and issue a decision in writing (with a statement of findings and reasons) that affirms, reverses, or modifies the previous decision. An appeal under this section would be considered as filed at the time it was delivered to the VA or at the time it was released for submission to the VA (for example, this could be evidenced by the postmark, if mailed).

Note to § 17.904: The final decision of the Director will inform the claimant of further appellate rights for an appeal to the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

§ 17.905 Medical records.

Copies of medical records generated outside VA that relate to activities for which VA is asked to provide payment or that VA determines are necessary to adjudicate claims under §§ 17.900 through 17.905 must be provided to VA at no cost.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AK90

Vocational Training for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish regulations regarding provision of vocational training and rehabilitation for women Vietnam veterans' children with covered birth defects. It would revise the current regulations regarding vocational training and rehabilitation for Vietnam veterans' children suffering from spina bifida to also encompass vocational training and rehabilitation for women Vietnam veterans' children with certain other birth defects. This is necessary to provide vocational training and rehabilitation for such children in accordance with recently enacted legislation. Companion documents entitled ''Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects'' (RIN 2900–AK67) and ''Health Care for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida'' (RIN 2900–AK88) are set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Comments must be received by VA on or before February 1, 2002, except that comments on the information collection provisions in this document must be received on or before March 4, 2002.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Room 1154, 810 Vermont Ave., NW, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK90.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). In addition, see the Paperwork Reduction Act heading under the **SUPPLEMENTARY INFORMATION** section of this preamble regarding submission of comments on the information collection provisions.

FOR FURTHER INFORMATION CONTACT: Charles A. Graffam, Consultant, Vocational Rehabilitation and Employment Service (282), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420; (202) 273–7410.

SUPPLEMENTARY INFORMATION: Prior to the enactment of Public Law 106–419 on November 1, 2000, the provisions of 38 U.S.C. chapter 18 only concerned benefits for children with spina bifida who were born to Vietnam veterans. Effective December 1, 2001, section 401 of Public Law 106–419 amends 38 U.S.C. chapter 18 to add benefits for women Vietnam veterans' children with certain birth defects (referred to below as ''covered birth defects'').

As amended, 38 U.S.C. chapter 18 provides for three separate types of benefits for women Vietnam veterans' children who suffer from covered birth defects as well as for Vietnam veterans' children who suffer from spina bifida: (1) Monthly monetary allowances for various disability levels; (2) provision of health care needed for the child's spina bifida or covered birth defects; and (3) provision of vocational training and rehabilitation.

This document proposes to amend VA's ''Vocational Rehabilitation and Education'' regulations (38 CFR part 21) by revising the regulations in part 21, subpart M (§§ 21.8010 through 21.8410) concerning the provision of vocational training and rehabilitation. These regulations currently only concern the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida. This document proposes to revise the regulations by adding women Vietnam veterans' children with covered birth defects to the existing regulatory framework. The revisions would also correct the references to § 21.222 in § 21.8210 and to § 21.8020 in § 21.8082 and make other nonsubstantive changes for purposes of clarity. These would include amending § 21.8050(c) to clarify that VA does not provide for room and board for a vocational training program under part 21, subpart M, other than for a period of 30 days or less in a special rehabilitation facility for purposes of an extended evaluation or to improve and enhance vocational potential.

As a condition of eligibility for the provision of vocational training and rehabilitation under 38 U.S.C. 1814 for women Vietnam veterans' children with covered birth defects, it is proposed that the child must be an *individual* determined to have a *covered birth defect* under 38 CFR 3.815. (Definitions of the terms *individual* and *covered birth defect* and provisions concerning identification of covered birth defects are included in proposed § 3.815 set forth in the companion document concerning monetary allowances and identification of covered birth defects (RIN 2900–AK67) published in the Proposed Rules section of this issue of the **Federal Register**.)

This proposed rule includes a definition of *eligible child* that describes a child for whom the statute authorizes VA to provide vocational training under this subpart. In the revised § 21.8282, ''Termination of a vocational training program,'' we propose to add provisions that would be applicable if VA makes a determination that a child no longer has a covered birth defect.

By statute, a child would only be eligible for one program of vocational training under 38 U.S.C. chapter 18 (even if, for example, a child has spina bifida and one or more other covered birth defects). It is proposed to reflect this in § 21.8016.

It is proposed that a woman Vietnam veteran's child with covered birth defects receive testing and evaluative services, as needed, similar to the testing and services that VA offers a veteran for the purposes of evaluation for eligibility and entitlement under a vocational rehabilitation program under 38 U.S.C. chapter 31. These testing and evaluative services are appropriate for determining whether it is reasonably feasible for the child to achieve a vocational goal and to guide the child, parent, or guardian in choosing a vocational training program for the child. This already applies to vocational training and rehabilitation for Vietnam veterans' children with spina bifida.

It is proposed that an eligible child would receive vocational training program services and assistance under provisions that, under the 38 U.S.C. chapter 31 program, already apply to vocational training program services and assistance for eligible veterans with service-connected disabilities. In this regard, it is proposed that the following provisions of 38 CFR part 21, subpart A, would apply as set forth in the text portion of this document:

- § 21.35 concerning certain definitions and explanations (see proposed § 21.8010).
- § 21.250(a) and (b)(2), concerning provision of employment services, including the definition of job development; § 21.252 concerning job development and placement services; § 21.254 concerning supportive services; § 21.256 concerning incentives for employers; and §§ 21.257 and 21.258 concerning rehabilitation through self-employment, including special assistance for persons engaged in self-employment programs (see proposed § 21.8020).

• §§ 21.50(b)(5) and 21.53(b) and (d) concerning the scope and nature of an evaluation of the reasonable feasibility of achieving a vocational goal (see proposed § 21.8032).

• §§ 21.80, 21.84, and 21.88 concerning the requirements for an individualized written plan of vocational rehabilitation and its purposes, to include employment assistance; and §§ 21.92, 21.94 (a) through (d), and 21.96 concerning preparation of, changes to, and review of an individualized written plan of vocational rehabilitation (see proposed §§ 21.8080 and 21.8082).

• §§ 21.100 and 21.380 concerning counseling (see proposed § 21.8100).

• § 21.120 concerning vocational training; §§ 21.122 through 21.132 concerning types of allowable vocational training; and § 21.146 concerning independent instructor courses (see proposed § 21.8120).

• §§ 21.290 through 21.298 concerning course approval and facility selection (except that the provisions pertaining to use of facilities offering independent living services to evaluate independent living potential (see § 21.294(b)(1)(i)) and to provide a program of independent living services to individuals for whom an Individualized Independent Living Plan (IILP) has been developed (see § 21.294(b)(1)(ii)) do not apply, and provisions concerning authorization of independent living services as an incidental part of a plan (see § 21.294(b)(1)(iii)) apply, in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program, only to the extent allowable under proposed § 21.8050 for an individualized written plan of vocational rehabilitation) (see proposed §§ 21.8120 and 21.8286).

• § 21.142(a) and (b); § 21.144; § 21.146; § 21.148(a) and (c); § 21.150, other than paragraph (b); § 21.152, other than paragraph (b); § 21.154, other than paragraph (b); and § 21.156 concerning special rehabilitative services of the following types: adult basic education, vocational course in a sheltered workshop or rehabilitation facility, independent instructor course, tutorial assistance, reader service, interpreter service for the hearing impaired, special transportation assistance, and other vocationally oriented incidental services (see proposed § 21.8140).

• §§ 21.212 through 21.224 concerning supplies (however, the following provisions do not apply to this subpart: § 21.216(a)(3) concerning special modifications, including automobile adaptive equipment; § 21.220(a)(1) concerning advancements from the 38 U.S.C. chapter 31 program revolving loan fund; and § 21.222(b)(1)(x) concerning release or repayment for independent living services program supplies) (see proposed § 21.8210).

• § 21.262 concerning reimbursement for costs of training and rehabilitation facilities, supplies, and services (see proposed § 21.8260).

• §§ 21.60 and 21.62 concerning a medical consultant and the Vocational Rehabilitation Panel and § 21.310 concerning rate of pursuit measurement (see proposed § 21.8310).

• § 21.326 concerning the commencement and termination dates of a period of employment services (see proposed § 21.8320).

• §§ 21.362 and 21.364 concerning satisfactory conduct and cooperation (see proposed § 21.8360).

• § 21.154 concerning special transportation allowance; § 21.370 (however, the words ''under § 21.282'' in § 21.370(b)(2)(iii)(B) do not apply) and § 21.372 concerning intraregional and interregional travel at government expense; and § 21.376 concerning authorization of transportation services for evaluation or counseling (see proposed § 21.8370).

• § 21.380 concerning personnel qualification standards; §§ 21.412 and 21.414 (except § 21.414(c), (d), and (e)) concerning finality and revision of decisions; § 21.420 concerning notification that VA will provide as to findings, decisions, and appeal rights; and § 21.430 concerning accountability for authorization and payment of program costs for training and rehabilitation services (see proposed § 21.8380).

As set forth in the text portion of this document, these provisions appear to be appropriate to apply to the provision of vocational training and rehabilitation for women Vietnam veterans' children with covered birth defects. The same provisions apply to the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida.

It is also proposed that VA officials will inform children who have covered birth defects about any vocational training and rehabilitation that may be available under other governmental and nongovernmental programs. This already applies to the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida.

It is proposed that VA provide case management to assist the eligible child throughout a planned vocational training program. This would help to ensure that the child achieves the maximum vocational benefit from the program. This already applies to the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida.

Comment Period

We are providing, except for comments on the information collection provisions, a comment period of 30 days for this proposed rule due to the December 1, 2001, effective date of the new benefit programs enacted by section 401 of Public Law 106–419, the statutory requirement for a final rule prior to that date, and the need to have a final rule as soon as possible in order to avoid delay in the commencement of those benefits. We are providing for the information collections in this document a 60-day comment period pursuant to the Paperwork Reduction Act.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), collections of information are set forth in the provisions of proposed §§ 21.8014 and 21.8370. Proposed § 21.8014 would amend the provisions prescribing the information to be submitted for an application for a Vietnam veteran's child suffering from spina bifida to participate in a VA vocational training program. Proposed § 21.8370 would permit a request for reimbursement for certain transportation costs and would require submission of supporting documentation to receive reimbursement. Although provisions in the current § 21.8016 previously had been approved by the Office of Management and Budget (OMB) as an information collection under control number 2900–0581, VA is not seeking reinstatement and is requesting OMB to discontinue that approval because, as currently in effect and as proposed to be revised, § 21.8016 affects fewer than 10 respondents annually. As required under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to the OMB for its review of the collections of information in this proposed rule.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collections of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention Desk Officer for the Department of Veterans Affairs, Office of Information

and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1154, Washington, DC 20420; by fax to (202) 273–9289; or by e-mail to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK90.'' All written comments to VA will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

Title: Application for Vocational Training Benefits—Certain Children of Vietnam Veterans.

Summary of collection of information: The provisions of proposed 38 CFR 21.8014 would extend to women Vietnam veteran's children with covered birth defects the requirement that is applicable to Vietnam veterans' children with spina bifida for submitting an application for vocational training to be considered for this benefit.

Type of review: Reinstatement with change of a previously approved collection for which approval has expired (OMB control number 2900–0579).

Description of need for information and proposed use of information: VA needs to know sufficient identifying information about the applicant and the applicant's natural parent who was a Vietnam veteran to be able to relate the claim to other existing VA records. The information collected allows the Vocational Rehabilitation and Employment (VR&E) Division to review the existing records and to set up an appointment for an applicant to meet with a VR&E staff member to evaluate the claim.

Description of likely respondents: Adult children with spina bifida or other covered birth defects, parents or guardians of minor or incompetent children with spina bifida or other covered birth defects, authorized representatives, or Members of Congress.

Estimated number of respondents: 50.

Estimated frequency of responses: Once.

Estimated total annual reporting and recordkeeping burden: 12.5 reporting burden hours. The total annual reporting burden is based on each respondent taking 15 minutes to write to VA indicating a desire to take part in a vocational training program and providing the necessary identifying information. Although there is no set format for this application, the applicant must provide certain information to perfect the claim. There are no recordkeeping requirements.

Estimated average burden per respondent: 15 minutes.

Title: Request for Transportation Expense Reimbursement.

Summary of collection of information: The provisions of proposed 38 CFR 21.8370 would extend to women Vietnam veteran's children with covered birth defects the current requirement applicable to Vietnam veterans' children with spina bifida that a child receiving vocational training to request VA payment for travel expenses. VA must determine that the child would be unable to pursue training or employment or employment without this assistance. To obtain payment, the child must submit documentation showing the expenses of transportation.

Type of review: Reinstatement with change of a previously approved collection for which approval has expired (OMB control number 2900–0580).

Description of need for information and proposed use of information: A child must specifically request VA assistance with transportation expenses. This allows VA to investigate the child's situation to establish that the child would be unable to pursue training or employment without VA travel assistance. To receive payment, the child must provide supportive documentation of actual expenses incurred for the travel. This prevents VA from making payment erroneously or for fraudulently claimed travel.

Description of likely respondents: Children with spina bifida or other covered birth defects.

Estimated number of respondents: 40. Approximately half of the children who plan and enter a program will need VA financial support for their transportation expenses while in a program.

Estimated frequency of responses: Once for the initial request; monthly to obtain the travel reimbursement.

Estimated total annual reporting and recordkeeping burden: 50 reporting burden hours. Each respondent will require 15 minutes to prepare and submit the initial request ($40 \times \frac{1}{4}$ hour = 10 hours). Each respondent will then require 5 minutes to copy and submit receipts for transportation expenses to obtain reimbursement ($40 \times 12 \times \frac{1}{12}$ hour = 40 hours).

Estimated average burden per respondent: 1 hour and 15 minutes.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

Executive Order 12866

This proposed rule has been reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that the adoption of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. It is estimated that there are only 1,200 Vietnam veterans' children who suffer from spina bifida and women Vietnam veteran's children who suffer from spina bifida or other covered birth defects. They are widely dispersed geographically, and the services provided to them would not have a significant impact on any small businesses. Moreover, the institutions capable of providing appropriate services and vocational training to Vietnam veteran's children with covered birth defects or spina bifida are generally large capitalization facilities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number for benefits

affected by this rule is 64.128. There is no Catalog of Federal Domestic Assistance program number for other benefits affected by this rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflicts of interest, Defense Department, Education, Employment, Government contracts, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Personnel training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 26, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 21 is proposed to be amended as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

1. In part 21, the heading of subpart M is revised to read as follows:

Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

2. The authority citation for part 21, subpart M is revised to read as follows:

Authority: 38 U.S.C. 101, 501, 512, 1151 note, 1802, 1804–1805, 1811, 1811 note, 1812, 1814, 1816, 1821–1824, 5112, unless otherwise noted.

3. Sections 21.8010 through 21.8410 are revised to read as follows:

General

§ 21.8010 Definitions and abbreviations.

(a) *Program-specific definitions and abbreviations.* For the purposes of this subpart:

Covered birth defect means the same as defined at § 3.815(c)(3) of this title.

Eligible child means, as appropriate, either an *individual* as defined at § 3.814(c)(2) of this title who suffers from spina bifida, or an *individual* as defined at § 3.815(c)(2) of this title who has a covered birth defect other than a birth defect described in § 3.815(a)(2).

Employment assistance means employment counseling, placement and post-placement services, and personal and work adjustment training.

Institution of higher education has the same meaning that § 21.4200 provides for the term *institution of higher learning.*

Program of employment services means the services an eligible child may receive if the child's entire program consists only of employment assistance.

Program participant means an eligible child who, following an evaluation in which VA finds the child's achievement of a vocational goal is reasonably feasible, elects to participate in a vocational training program under this subpart.

Spina bifida means the same as defined at § 3.814(c)(3) of this title.

Vietnam veteran means, in the case of a child suffering from spina bifida, the same as defined at § 3.814(c)(1) or § 3.815(c)(1) of this title and, in the case of a child with a covered birth defect, the same as defined at § 3.815(c)(1) of this title.

Vocational training program means the vocationally oriented training services, and assistance, including placement and post-placement services, and personal and work-adjustment training that VA finds necessary to enable the child to prepare for and participate in vocational training or employment. A vocational training program may include a program of education offered by an institution of higher education only if the program is predominantly vocational in content.

VR&E refers to the Vocational Rehabilitation and Employment activity (usually a division) in a Veterans Benefits Administration regional office, the staff members of that activity in the regional office or in outbased locations, and the services that activity provides.

(Authority: 38 U.S.C. 101, 1802, 1804, 1811–1812, 1814, 1821)

(b) *Other terms and abbreviations.* The following terms and abbreviations have the same meaning or explanation that § 21.35 provides:

(1) CP (Counseling psychologist);

(2) Program of education;

(3) Rehabilitation facility;

(4) School, educational institution, or institution;

(5) Training establishment;

(6) Vocational goal;

(7) VRC (Vocational rehabilitation counselor);

(8) VRS (Vocational rehabilitation specialist); and

(9) Workshop.

(Authority: 38 U.S.C. 1804, 1811, 1814, 1821)

§ 21.8012 Vocational training program for certain children of Vietnam veterans—spina bifida and covered birth defects.

VA will provide an evaluation to an eligible child to determine the child's potential for achieving a vocational goal. If this evaluation establishes that it is feasible for the child to achieve a vocational goal, VA will provide the child with the vocational training, employment assistance, and other related rehabilitation services authorized by this subpart that VA finds the child needs to achieve a vocational goal, including employment.

(Authority: 38 U.S.C. 1804, 1812, 1814)

§ 21.8014 Application.

(a) *Filing an application.* To participate in a vocational training program, the child of a Vietnam veteran (or the child's parent or guardian, an authorized representative, or a Member of Congress acting on behalf of the child) must file an application. An application is a request for an evaluation of the feasibility of the child's achievement of a vocational goal and, if a CP or VRC determines that achievement of a vocational goal is feasible, for participation in a vocational training program. The application may be in any form, but it must:

(1) Be in writing over the signature of the applicant or the person applying on the child's behalf;

(2) Provide the child's full name, address, and VA claim number, if any, and the parent Vietnam veteran's full name and Social Security number or VA claim number, if any; and

(3) Clearly identify the benefit sought.

(Authority: 38 U.S.C. 1804(a), 1822, 5101)

(b) *Time for filing.* For a child claiming eligibility based on having spina bifida, an application under this subpart may be filed at any time after September 30, 1997. For a child claiming eligibility based on a covered birth defect, an application under this subpart may be filed at any time after November 30, 2001.

(Authority: 38 U.S.C. 1804, 1811, 1811 note, 1812, 1814, 1821)

§ 21.8016 Nonduplication of benefits.

(a) *Election of benefits—chapter 35.* An eligible child may not receive benefits concurrently under 38 U.S.C. chapter 35 and under this subpart. If the child is eligible for both benefits, he or she must elect in writing which benefit to receive.

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1824)

(b) *Reelections of benefits—chapter 35.* An eligible child receiving benefits under this subpart or under 38 U.S.C. chapter 35 may change his or her election at any time. A reelection between benefits under this subpart and under 38 U.S.C. chapter 35 must be prospective, however, and may not result in an eligible child receiving

benefits under both programs for the same period of training.

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1824)

(c) *Length of benefits under multiple programs—chapter 35.* The aggregate period for which an eligible child may receive assistance under this subpart and under 38 U.S.C. chapter 35 together may not exceed 48 months of full-time training or the part-time equivalent.

(Authority: 38 U.S.C. 1804(e)(2), 1814)

(d) *Nonduplication of benefits under 38 U.S.C. 1804 and 1814.* An eligible child may only be provided one program of vocational training under this subpart.

(Authority: 38 U.S.C. 1804, 1814, 1824)

Basic Entitlement Requirements

§ 21.8020 Entitlement to vocational training and employment assistance.

(a) *Basic entitlement requirements.* Under this subpart, for an eligible child to receive vocational training, employment assistance, and related rehabilitation services and assistance to achieve a vocational goal (to include employment), the following requirements must be met:

(1) A CP or VRC must determine that achievement of a vocational goal by the child is reasonably feasible; and

(2) The child and VR&E staff members must work together to develop and then agree to an individualized written plan of vocational rehabilitation identifying the vocational goal and the means to achieve this goal.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Services and assistance.* An eligible child may receive the services and assistance described in § 21.8050(a). The following sections in subpart A of this part apply to the provision of these services and assistance in a manner comparable to their application for a veteran under that subpart:

(1) Section 21.250(a) and (b)(2);

(2) Section 21.252;

(3) Section 21.254;

(4) Section 21.256 (not including paragraph (e)(2));

(5) Section 21.257; and

(6) Section 21.258.

(Authority: 38 U.S.C. 1804, 1814)

(c) *Requirements to receive employment services and assistance.* VA will provide employment services and assistance under paragraph (b) of this section only if the eligible child:

(1) Has achieved a vocational objective;

(2) Has voluntarily ceased vocational training under this subpart, but the case manager finds the child has attained sufficient skills to be employable; or

(3) VA determines during evaluation that the child already has the skills necessary for suitable employment and does not need additional training, but to secure suitable employment the child does need the employment assistance that paragraph (b) of this section describes.

(Authority: 38 U.S.C. 1804, 1814)

(d) *Additional employment services and assistance.* If an eligible child has received employment assistance and obtains a suitable job, but VA later finds the child needs additional employment services and assistance, VA may provide the child with these services and assistance if, and to the extent, the child has remaining program entitlement.

(Authority: 38 U.S.C. 1804, 1814)

(e) *Program entitlement usage.* (1) *Basic entitlement period.* An eligible child will be entitled to receive 24 months of full-time training, services, and assistance (including employment assistance) or the part-time equivalent, as part of a vocational training program.

(2) *Extension of basic entitlement period.* VA may extend the basic 24-month entitlement period, not to exceed another 24 months of full-time program participation, or the part-time equivalent, if VA determines that:

(i) The extension is necessary for the child to achieve a vocational goal identified before the end of the basic 24-month entitlement period; and

(ii) The child can achieve the vocational goal within the extended period.

(3) *Principles for charging entitlement.* VA will charge entitlement usage for training, services, or assistance (but not the initial evaluation, as described in § 21.8032) furnished to an eligible child under this subpart on the same basis as VA would charge for similar training, services, or assistance furnished a veteran in a vocational rehabilitation program under 38 U.S.C. chapter 31. VA may charge entitlement at a half-time, three-quarter-time, or full-time rate based upon the child's training time using the rate-of-pursuit criteria in § 21.8310. The provisions concerning reduced work tolerance under § 21.312, and those relating to less-than-half-time training under § 21.314, do not apply under this subpart.

(Authority: 38 U.S.C. 1804, 1814)

§ 21.8022 Entry and reentry.

(a) *Date of program entry.* VA may not enter a child into a vocational training program or provide an evaluation or any training, services, or assistance under this subpart before the date VA first receives an application for a vocational training program filed in accordance with § 21.8014.

(Authority: 38 U.S.C. 1151 note, 1804, 1811, 1811 note, 1812, 1814)

(b) *Reentry.* If an eligible child interrupts or ends pursuit of a vocational training program and VA subsequently allows the child to reenter the program, the date of reentrance will accord with the facts, but may not precede the date VA receives an application for the reentrance.

(Authority: 38 U.S.C. 1804, 1814, 1822)

Evaluation

§ 21.8030 Requirement for evaluation of child.

(a) *Children to be evaluated.* The VR&E Division will evaluate each child who:

(1) Applies for a vocational training program; and

(2) Has been determined to be an eligible child as defined in § 21.8010.

(Authority: 38 U.S.C. 1804(a), 1814)

(b) *Purpose of evaluation.* The evaluation has two purposes:

(1) To ascertain whether achievement of a vocational goal by the child is reasonably feasible; and

(2) If a vocational goal is reasonably feasible, to develop an individualized plan of integrated training, services, and assistance that the child needs to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804, 1814)

§ 21.8032 Evaluations.

(a) *Scope and nature of evaluation.* The scope and nature of the evaluation under this program will be comparable to an evaluation of the reasonable feasibility of achieving a vocational goal for a veteran under 38 U.S.C. chapter 31 and §§ 21.50(b)(5) and 21.53(b) and (d).

(Authority: 38 U.S.C. 1804(a), 1814)

(b) *Specific services to determine the reasonable feasibility of achieving a vocational goal.* As a part of the evaluation of reasonable feasibility of achieving a vocational goal, VA may provide the following specific services, as appropriate:

(1) Assessment of feasibility by a CP or VRC;

(2) Review of feasibility assessment and of need for special services by the Vocational Rehabilitation Panel;

(3) Provision of medical, testing, and other diagnostic services to ascertain the child's capacity for training and employment; and

(4) Evaluation of employability by professional staff of an educational or

rehabilitation facility, for a period not to exceed 30 days.

(Authority: 38 U.S.C. 1804(a), 1814)

(c) *Responsibility for evaluation.* A CP or VRC will make all determinations as to the reasonable feasibility of achieving a vocational goal.

(Authority: 38 U.S.C. 1804(a), (b), 1814)

Services and Assistance to Program Participants

§ 21.8050 Scope of training, services, and assistance.

(a) *Allowable training, services, and assistance.* VA may provide to vocational training program participants:

(1) Vocationally oriented training, services, and assistance, to include:

(i) Training in an institution of higher education if the program is predominantly vocational; and

(ii) Tuition, fees, books, equipment, supplies, and handling charges.

(2) Employment assistance including:

(i) Vocational, psychological, employment, and personal adjustment counseling;

(ii) Services to place the individual in suitable employment and post-placement services necessary to ensure satisfactory adjustment in employment; and

(iii) Personal adjustment and work adjustment training.

(3) Vocationally oriented independent living services only to the extent that the services are indispensable to the achievement of the vocational goal and do not constitute a significant portion of the services to be provided.

(4) Other vocationally oriented services and assistance of the kind VA provides veterans under the 38 U.S.C. chapter 31 program, except as paragraph (c) of this section provides, that VA determines the program participant needs to prepare for and take part in vocational training or in employment.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Vocational training program.* VA will provide either directly or by contract, agreement, or arrangement with another entity, and at no cost to the beneficiary, the vocationally oriented training, other services, and assistance that VA approves for the individual child's program under this subpart. Authorization and payment for approved services will be made in a comparable manner to that VA provides for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Prohibited services and assistance.* VA may not provide to a vocational training program participant any:

(1) Loan;

(2) Subsistence allowance;

(3) Automobile adaptive equipment;

(4) Training at an institution of higher education in a program of education that is not predominantly vocational in content;

(5) Employment adjustment allowance;

(6) Room and board (other than for a period of 30 days or less in a special rehabilitation facility either for purposes of an extended evaluation or to improve and enhance vocational potential);

(7) Independent living services, except those that are incidental to the pursuit of the vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

Duration of Vocational Training

§ 21.8070 Basic duration of a vocational training program.

(a) *Basic duration of a vocational training program.* The duration of a vocational training program, as paragraphs (e)(1) and (e)(2) of § 21.8020 provide, may not exceed 24 months of full-time training, services, and assistance or the part-time equivalent, except as § 21.8072 allows.

(Authority: 38 U.S.C. 1804(d), 1814)

(b) *Responsibility for estimating the duration of a vocational training program.* While preparing the individualized written plan of vocational rehabilitation, the CP or VRC will estimate the time the child needs to complete a vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Duration and scope of training must meet general requirements for entry into the selected occupation.* The child will receive training, services, and assistance, as § 21.8120 describes, for a period that VA determines the child needs to reach the level employers generally recognize as necessary for entry into employment in a suitable occupational objective.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Approval of training beyond the entry level.* To qualify for employment in a particular occupation, the child may need training that exceeds the amount a person generally needs for employment in that occupation. VA will provide the necessary additional training under one or more of the following conditions:

(1) Training requirements for employment in the child's vocational goal in the area where the child lives or will seek employment exceed those job seekers generally need for that type of employment;

(2) The child is preparing for a type of employment in which he or she will be at a definite disadvantage in competing with nondisabled persons and the additional training will offset the competitive disadvantage;

(3) The choice of a feasible occupation is limited, and additional training will enhance the child's employability in one of the feasible occupations; or

(4) The number of employment opportunities within a feasible occupation is restricted.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Estimating the duration of the training period.* In estimating the length of the training period the eligible child needs, the CP or VRC must determine that:

(1) The proposed vocational training would not normally require a person without a disability more than 24 months of full-time pursuit, or the part-time equivalent, for successful completion; and

(2) The program of training and other services the child needs, based upon VA's evaluation, will not exceed 24 months or the part-time equivalent. In calculating the proposed program's length, the CP or VRC will follow the procedures in § 21.8074(a).

(Authority: 38 U.S.C. 1804(d), 1814)

(f) *Required selection of an appropriate vocational goal.* If the total period the child would require for completion of an initial vocational training program in paragraph (e) of this section is more than 24 months, or the part-time equivalent, the CP or VRC must work with the child to select another suitable initial vocational goal.

(Authority: 38 U.S.C. 1804(d)(2), 1814)

§ 21.8072 Authorizing training, services, and assistance beyond the initial individualized written plan of vocational rehabilitation.

(a) *Extension of the duration of a vocational training program.* VA may authorize an extension of a vocational training program when necessary to provide additional training, services, and assistance to enable the child to achieve the vocational or employment goal identified before the end of the child's basic entitlement period, as stated in the individualized written plan of vocational rehabilitation under § 21.8080. A change from one occupational objective to another in the same field or occupational family meets the criterion for prior identification in the individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(d)(2), (e)(2), 1814)

(b) *Extensions for prior participants in the program.* (1) Except as paragraph (b)(2) of this section provides, VA may authorize additional training, limited to the use of remaining program entitlement including any allowable extension, for an eligible child who previously participated in vocational training under this subpart. The additional training must:

(i) Be designed to enable the child to complete the prior vocational goal or a different vocational goal; and

(ii) Meet the same provisions as apply to training for new participants.

(2) An eligible child who has previously achieved a vocational goal in a vocational training program under this subpart may not receive additional training under paragraph (b)(1) of this section unless a CP or VRC sets aside the child's achievement of that vocational goal under § 21.8284.

(Authority: 38 U.S.C. 1804(b) through (e), 1814)

(c) *Responsibility for authorizing a program extension.* A CP or VRC may approve extensions of the vocational training program the child is pursuing up to the maximum program limit of 48 months if the CP or VRC determines that the child needs the additional time to successfully complete training and obtain employment, and the following conditions are met:

(1) The child has completed more than half of the planned training; and

(2) The child is making satisfactory progress.

(Authority: 38 U.S.C. 1804(d)(2), 1814)

§ 21.8074 Computing the period for vocational training program participation.

(a) *Computing the participation period.* To compute the number of months and days of an eligible child's participation in a vocational training program:

(1) Count the number of actual months and days of the child's:

(i) Pursuit of vocational education or training;

(ii) Receipt of extended evaluation-type services and training, or services and training to enable the child to prepare for vocational training or employment, if a veteran in a 38 U.S.C. chapter 31 program would have received a subsistence allowance while receiving the same type of services and training; and

(iii) Receipt of employment and post-employment services (any period of employment or post-employment services is considered full-time program pursuit).

(2) Do not count:

(i) The initial evaluation period;

(ii) Any period before the child enters a vocational training program under this subpart;

(iii) Days of authorized leave; and

(iv) Other periods during which the child does not pursue training, such as periods between terms.

(3) Convert part-time training periods to full-time equivalents.

(4) Total the months and days under paragraphs (a)(1) and (a)(3) of this section. This sum is the period of the child's participation in the program.

(Authority: 38 U.S.C. 1804(d), 1814)

(b) *Consistency with principles for charging entitlement.* Computation of the program participation period under this section will be consistent with the principles for charging entitlement under § 21.8020.

(Authority: 38 U.S.C. 1804(d), 1814)

Individualized Written Plan of Vocational Rehabilitation

§ 21.8080 Requirement for an individualized written plan of vocational rehabilitation.

(a) *General.* A CP or VRC will work in consultation with each child for whom a vocational goal is feasible to develop an individualized written plan of vocational rehabilitation services and assistance to meet the child's vocational training needs. The CP or VRC will develop this individualized written plan of vocational rehabilitation in a manner comparable to the rules governing the development of an individualized written rehabilitation plan (IWRP) for a veteran for 38 U.S.C. chapter 31 purposes, as §§ 21.80, 21.84, 21.88, 21.90, 21.92, 21.94 (a) through (d), and 21.96 provide.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Selecting the type of training to include in the individualized written plan of vocational rehabilitation.* If training is necessary, the CP or VRC will explore a range of possibilities, to include paid and unpaid on-job training, institutional training, and a combination of on-job and institutional training to accomplish the goals of the program. Generally, an eligible child's program should include on-job training, or a combination of on-job and institutional training, when this training:

(1) Is available;

(2) Is as suitable as using only institutional training for accomplishing the goals of the program; and

(3) Will meet the child's vocational training program needs.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

§ 21.8082 Inability of child to complete individualized written plan of vocational rehabilitation or achieve vocational goal.

(a) *Inability to timely complete an individualized written plan of vocational rehabilitation or achieve identified goal.* After a vocational training program has begun, the VR&E case manager may determine that the eligible child cannot complete the vocational training program described in the child's individualized written plan of vocational rehabilitation within the time limits of the individualized written plan of vocational rehabilitation or cannot achieve the child's identified vocational goal. Subject to paragraph (b) of this section, VR&E may assist the child in revising or selecting a new individualized written plan of vocational rehabilitation or goal.

(b) *Allowable changes in the individualized written plan of vocational rehabilitation or goal.* Any change in the eligible child's individualized written plan of vocational rehabilitation or vocational goal is subject to the child's continuing eligibility under the vocational training program and the provisions governing duration of a vocational training program in §§ 21.8020(e) and 21.8070 through 21.8074.

(Authority: 38 U.S.C. 1804(d), 1804(e), 1814)

(c) *Change in the individualized written plan of vocational rehabilitation or vocational goal.* (1) The individualized written plan of vocational rehabilitation or vocational goal may be changed under the same conditions as provided for a veteran under § 21.94 (a) through (d), and subject to § 21.8070 (d) through (f), if:

(i) The CP or VRC determines that achievement of a vocational goal is still reasonably feasible and that the new individualized written plan of vocational rehabilitation or goal is necessary to enable the eligible child to prepare for and participate in vocational training or employment; and

(ii) Reentrance is authorized under § 21.8284 in a case when the child has completed a vocational training program under this subpart.

(2) A CP or VRC may approve a change of vocational goal from one field or occupational family to another field or occupational family if the child can achieve the new goal:

(i) Before the end of the basic 24-month entitlement period that § 21.8020(e)(1) describes; or

(ii) Before the end of any allowable extension under §§ 21.8020(e)(2) and 21.8072 if the new vocational goal in

another field or occupational family was identified during the basic 24-month entitlement period.

(3) A change from one occupational objective to another in the same field or occupational family does not change the planned vocational goal.

(4) The child must have sufficient remaining entitlement to pursue the new individualized written plan of vocational rehabilitation or goal, as § 21.8020 provides.

(Authority: 38 U.S.C. 1804(d), 1814)

(d) *Assistance if child terminates planned program before completion.* If the eligible child elects to terminate the planned vocational training program, he or she will receive the assistance that § 21.80(d) provides in identifying other resources through which to secure the desired training or employment.

(Authority: 38 U.S.C. 1804(c), 1814)

Counseling

§ 21.8100 Counseling.

An eligible child requesting or receiving services and assistance under this subpart will receive professional counseling by VR&E and other qualified VA staff members, and by contract counseling providers, as necessary, in a manner comparable to VA's provision of these services to veterans under the 38 U.S.C. chapter 31 program, as §§ 21.100 and 21.380 provide.

(Authority: 38 U.S.C. 1803(c)(8), 1804(c), 1814)

Vocational Training, Services, and Assistance

§ 21.8120 Vocational training, services, and assistance.

(a) *Purposes.* An eligible child may receive training, services, and assistance to enable the child to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

(b) *Training permitted.* VA and the child will select vocationally oriented courses of study and training, completion of which usually results in a diploma, certificate, degree, qualification for licensure, or direct placement in employment. The educational and training services to be provided include:

(1) Remedial, deficiency, and refresher training; and

(2) Training that leads to an identifiable vocational goal. Under this program, VA may authorize all forms of programs that §§ 21.122 through 21.132 describe. This includes education and training programs in institutions of higher education. VA may authorize the education and training at an undergraduate or graduate degree level, only if the degree program is predominantly vocational in nature. For an eligible child to participate in a graduate degree program, the graduate degree must be a requirement for entry into the child's vocational goal. For example, a master's degree is required to engage in social work. The program of training is predominantly vocational in content if the majority of the instruction provides the technical skills and knowledge employers generally regard as specific to, and required for, entry into the child's vocational goal.

(c) *Cost of education and training services.* The CP or VRC will consider the cost of training in selecting a facility when:

(1) There is more than one facility in the area in which the child resides that:

(i) Meets the requirements for approval under §§ 21.290 through 21.298 (except as provided by § 21.8286(b)),

(ii) Can provide the training, services and other supportive assistance the child's individualized written plan of vocational rehabilitation specifies, and

(iii) Is within reasonable commuting distance; or

(2) The child wishes to train at a suitable facility in another area, even though a suitable facility in the area where the child lives can provide the training. In considering the costs of providing training in this case, VA will use the provisions of § 21.120 (except 21.120(a)(3)), § 21.370 (however, the words ''under § 21.282'' in § 21.370(b)(2)(iii)(B) do not apply), and § 21.372 in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

(d) *Accessible courses not locally available.* If suitable vocational training courses are not available in the area in which the child lives, or if they are available but not accessible to the child, VA may make other arrangements. These arrangements may include, but are not limited to:

(1) Transportation of the child, but not the child's family, personal effects, or household belongings, to another area where necessary services are available; or

(2) Use of an individual instructor to provide necessary training in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program, as § 21.146 describes.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

Evaluation and Improvement of Vocational Potential

§ 21.8140 Evaluation and improvement of vocational potential.

(a) *General.* A CP or VRC may use the services that paragraph (d) of this section describes to:

(1) Evaluate vocational training and employment potential;

(2) Provide a basis for planning:

(i) A program of services and assistance to improve the eligible child's preparation for vocational training and employment; or

(ii) A vocational training program;

(3) Reevaluate the vocational training feasibility of an eligible child participating in a vocational training program; and

(4) Remediate deficiencies in the child's basic capabilities, skills, or knowledge to give the child the ability to participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Periods when evaluation and improvement services may be provided.* A CP or VRC may authorize the services described in paragraph (d) of this section, except those in paragraph (d)(4) of this section, for delivery during:

(1) An initial or extended evaluation; or

(2) Pursuit of a vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Duration of services.* The duration of services needed to improve vocational training and employment potential, furnished on a full-time basis either as a preliminary part or all of a vocational training program, may not exceed 9 months. If VA furnishes these services on a less than full-time basis, the duration will be for the period necessary, but may not exceed the equivalent of 9 months of full-time training.

(Authority: 38 U.S.C. 1804(c), 1814)

(d)*Scope of services.* Evaluation and improvement services include:

(1) Diagnostic services;

(2) Personal and work adjustment training;

(3) Referral for medical care and treatment for the spina bifida, covered birth defects, or related conditions;

(4) Vocationally oriented independent living services indispensable to pursuing a vocational training program;

(5) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;

(6) Orientation, adjustment, mobility and related services; and

(7) Other appropriate services to assist the child in functioning in the proposed training or work environment.
(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Applicability of chapter 31 rules on special rehabilitation services.* The provisions of § 21.140 do not apply to this subpart. Subject to the provisions of this subpart, the following provisions apply to the vocational training program under this subpart in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program: § 21.142(a) and (b); § 21.144; § 21.146; § 21.148(a) and (c); § 21.150 other than paragraph (b); § 21.152 other than paragraph (b); § 21.154 other than paragraph (b); and § 21.156.

(Authority: 38 U.S.C. 1804(c), 1814)

Supplies

§ 21.8210 Supplies.

(a) *Purpose of furnishing supplies.* VA will provide the child with the supplies that the child needs to pursue training, to obtain and maintain employment, and otherwise to achieve the goal of his or her vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Types of supplies.* VA may provide books, tools, and other supplies and equipment that VA determines are necessary for the child's vocational training program and are required by similarly circumstanced veterans pursuing such training under 38 U.S.C. chapter 31.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Periods during which VA may furnish supplies.* VA may provide supplies to an eligible child receiving:
(1) An initial or extended evaluation;
(2) Vocational training, services, and assistance to reach the point of employability; or
(3) Employment services.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Other rules.* The provisions of §§ 21.212 through 21.224 apply to children pursuing a vocational training program under this subpart in a comparable manner as VA provides supplies to veterans under 38 U.S.C. chapter 31, except the following portions:
(1) Section 21.216(a)(3) pertaining to special modifications, including automobile adaptive equipment;
(2) Section 21.220(a)(1) pertaining to advancements from the revolving fund loan;
(3) Section 21.222(b)(1)(x) pertaining to discontinuance from an independent living services program.

(Authority: 38 U.S.C. 1804(c), 1814)

Program Costs

§ 21.8260 Training, services, and assistance costs.

The provisions of § 21.262 pertaining to reimbursement for training and other program costs apply, in a comparable manner as provided under the 38 U.S.C. chapter 31 program for veterans, to payments to facilities, vendors, and other providers for training, supplies, and other services they deliver under this subpart.

(Authority: 38 U.S.C. 1804(c), 1814)

Vocational Training Program Entrance, Termination, and Resources

§ 21.8280 Effective date of induction into a vocational training program.

Subject to the limitations in § 21.8022, the date an eligible child is inducted into a vocational training program will be the date the child first begins to receive training, services, or assistance under an individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(c), (d), 1814)

§ 21.8282 Termination of a vocational training program.

A case manager may terminate a vocational training program under this subpart for cause, including lack of cooperation, failure to pursue the individualized written plan of vocational rehabilitation, fraud, administrative error, or finding that the child no longer has a covered birth defect. An eligible child for whom a vocational goal is reasonably feasible remains eligible for the program subject to the rules of this subpart unless the child's eligibility for or entitlement to a vocational training program under this subpart resulted from fraud or administrative error or unless VA finds the child no longer has a covered birth defect. The effective date of termination will be the earliest of the following applicable dates:
(a) *Fraud.* If an eligible child establishes eligibility for or entitlement to benefits under this subpart through fraud, VA will terminate the award of vocational training and rehabilitation as of the date VA first began to pay benefits.
(b) *Administrative error.* If an eligible child who is not entitled to benefits under this subpart receives those benefits through VA administrative error, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or other term of training unless VA has already obligated payment for the training.
(c) *Change in status as an eligible child with a covered birth defect.* If VA finds that a child no longer has a covered birth defect, VA will terminate the award of benefits effective the last day of the month in which such determination becomes final.
(d) *Lack of cooperation or failure to pursue individualized written plan of vocational rehabilitation.* If reasonable VR&E efforts to motivate an eligible child do not resolve a lack of cooperation or failure to pursue an individualized written plan of vocational rehabilitation, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or other term of training. VA will deobligate payment for training in the new quarter, semester, or other term of training.

(Authority: 38 U.S.C. 1804, 1814)

§ 21.8284 Additional vocational training.

VA may provide an additional period of training or services under a vocational training program to an eligible child who has completed training for a vocational goal and/or been suitably employed under this subpart, if the child is otherwise eligible and has remaining program entitlement as provided in § 21.8072(b), only under one of the following conditions:
(a) Current facts, including any relevant medical findings, establish that the child's disability has worsened to the extent that he or she can no longer perform the duties of the occupation which was the child's vocational goal under this subpart;
(b) The occupation that was the child's vocational goal under this subpart is now unsuitable;
(c) The vocational training program services and assistance the child originally received are now inadequate to make the child employable in the occupation which he or she sought to achieve;
(d) Experience has demonstrated that VA should not reasonably have expected employment in the objective or field for which the child received vocational training program services and assistance; or
(e) Technological change that occurred after the child achieved a vocational goal under this subpart now prevents the child from:
(1) Performing the duties of the occupation for which VA provided

training, services, or assistance, or in a related occupation; or

(2) Securing employment in the occupation for which VA provided training, services, or assistance, or in a related occupation.

(Authority: 38 U.S.C. 1804(c), 1814)

§ 21.8286 Training resources.

(a) *Applicable 38 U.S.C. chapter 31 resource provisions.* The provisions of § 21.146 and §§ 21.290 through 21.298 apply to children pursuing a vocational training program under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program, except as paragraph (b) of this section specifies.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Limitations.* The provisions of § 21.294(b)(1)(i) and (b)(1)(ii) pertaining to independent living services do not apply to this subpart. The provisions of § 21.294(b)(1)(iii) pertaining to authorization of independent living services as a part of an individualized written plan of vocational rehabilitation apply to children under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program only to the extent § 21.8050 allows.

(Authority: 38 U.S.C. 1804(c), 1814)

Rate of Pursuit

§ 21.8310 Rate of pursuit.

(a) *General requirements.* VA will approve an eligible child's pursuit of a vocational training program at a rate consistent with his or her ability to successfully pursue training, considering:

(1) Effects of his or her disability;

(2) Family responsibilities;

(3) Travel;

(4) Reasonable adjustment to training; and

(5) Other circumstances affecting the child's ability to pursue training.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Continuous pursuit.* An eligible child should pursue a program of vocational training with as little interruption as necessary, considering the factors in paragraph (a) of this section.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Responsibility for determining the rate of pursuit.* VR&E staff members will consult with the child when determining the rate and continuity of pursuit of a vocational training program. These staff members will also confer with the medical consultant and the Vocational Rehabilitation Panel described in §§ 21.60 and 21.62, as necessary. This rate and continuity of pursuit determination will occur during development of the individualized written plan of vocational rehabilitation, but may change later, as necessary to enable the child to complete training.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Measurement of training time used.* VA will measure the rate of pursuit in a comparable manner to rate of pursuit measurement under § 21.310 for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c), 1814)

Authorization of Services

§ 21.8320 Authorization of services.

The provisions of § 21.326, pertaining to the commencement and termination dates of a period of employment services, apply to children under this subpart in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program. References in that section to an individualized employment assistance plan or IEAP are considered as referring to the child's individualized written plan of vocational rehabilitation under this subpart.

(Authority: 38 U.S.C. 1804(c), 1814)

Leaves of Absence

§ 21.8340 Leaves of absence.

(a) *Purpose of leave of absence.* The purpose of the leave system is to enable the child to maintain his or her status as an active program participant.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Basis for leave of absence.* The VR&E case manager may grant the child leaves of absence for periods during which the child fails to pursue a vocational training program. For prolonged periods of absence, the VR&E case manager may approve leaves of absence only if the case manager determines the child is unable to pursue a vocational training program through no fault of the child.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Effect on entitlement.* During a leave of absence, the running of the basic 24-month period of entitlement, plus any extensions thereto, shall be suspended until the child resumes the program.

(Authority: 38 U.S.C. 1804(c), 1814)

Satisfactory Conduct and Cooperation

§ 21.8360 Satisfactory conduct and cooperation.

The provisions for satisfactory conduct and cooperation in §§ 21.362 and 21.364, except as otherwise provided in this section, apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. If an eligible child fails to meet these requirements for satisfactory conduct or cooperation, the VR&E case manager will terminate the child's vocational training program. VA will not grant an eligible child reentrance to a vocational training program unless the reasons for unsatisfactory conduct or cooperation have been removed.

(Authority: 38 U.S.C. 1804(c), 1814)

Transportation Services

§ 21.8370 Authorization of transportation services.

(a) *General.* VA will authorize transportation services necessary for an eligible child to pursue a vocational training program. The sections in subpart A of this part that are referred to in this paragraph apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. Transportation services include:

(1) Transportation for evaluation or counseling under § 21.376;

(2) Intraregional travel under § 21.370 (except that assurance that the child meets all basic requirements for induction into training will be determined without regard to the provisions of § 21.282) and interregional travel under § 21.372;

(3) Special transportation allowance under § 21.154; and

(4) Commuting to and from training and while seeking employment, subject to paragraphs (c) and (d) of this section.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Reimbursement.* For transportation services that VA authorizes, VA will normally pay in arrears and in the same manner as tuition, fees, and other services under this program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Payment for commuting expenses for training and seeking employment.* VA may pay for transportation during the period of vocational training and the first 3 months the child receives employment services. VA may reimburse the child's costs, not to exceed $200 per month, of commuting to and from training and seeking employment if he or she requests this assistance and VA determines, after careful examination of the child's situation and subject to the limitations in paragraph (d) of this section, that the child would be unable to pursue training or employment without this assistance. VA may:

(1) Reimburse the facility at which the child is training if the facility provided transportation or related services; or

(2) Reimburse the child for his or her actual commuting expense if the child paid for the transportation.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Limitations.* Payment of commuting expenses under paragraph (a)(4) of this section may not be made for any period when the child:

(1) Is gainfully employed;

(2) Is eligible for, and entitled to, payment of commuting costs through other VA and non-VA programs; or

(3) Can commute to school with family, friends, or fellow students.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Documentation.* VA must receive supportive documentation with each request for reimbursement. The individualized written plan of vocational rehabilitation will specify whether VA will pay monthly or at a longer interval.

(Authority: 38 U.S.C. 1804(c), 1814)

(f) *Nonduplication.* An eligible child eligible for reimbursement of transportation services both under this section and under § 21.154 will receive only the benefit under § 21.154.

(Authority: 38 U.S.C. 1804(c), 1814)

Additional Applicable Regulations

§ 21.8380 Additional applicable regulations.

The following regulations are applicable to children in this program in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program: §§ 21.380, 21.412, 21.414 (except paragraphs (c), (d), and (e)), 21.420, and 21.430.

(Authority: 38 U.S.C. 1804, 1814, 5112)

Delegation of Authority

§ 21.8410 Delegation of authority.

The Secretary delegates authority for making findings and decisions under 38 U.S.C. 1804 and 1814 and the applicable regulations, precedents, and instructions for the program under this subpart to the Under Secretary for Benefits and to VR&E supervisory or non-supervisory staff members.

(Authority: 38 U.S.C. 512(a), 1804, 1814)

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Federal Register

Wednesday,

January 2, 2002

Part IV

Department of Veterans Affairs

38 CFR Parts 3, 17, and 21

Monetary Allowance Payments, Health Care, and Vocational Training for Certain Children of Vietnam Veterans; Proposed Rules

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK67

Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) adjudication regulations to provide for payment of a monetary allowance for an individual with disability from one or more covered birth defects who is a child of a woman Vietnam veteran and to provide for the identification of covered birth defects, to implement recent legislation. In addition, the proposed rule would amend the VA adjudication regulations affecting benefits for Vietnam veterans' children with spina bifida to reflect that legislation, to make conforming changes, and to remove unnecessary or obsolete provisions. Companion documents concerning the provision of health care (RIN 2900–AK88) and vocational training benefits (RIN 2900–AK90) for eligible children of Vietnam veterans are set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Comments must be received by VA on or before February 1, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK67.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 401 of the Veterans Benefits and Health Care Improvement Act of 2000, Public Law 106–419, amends chapter 18 of title 38, United States Code, effective December 1, 2001, to authorize VA to provide certain benefits, including a monthly monetary allowance, for children with covered birth defects who are the natural children of women veterans who served in the Republic of Vietnam during the Vietnam era. This document proposes to amend existing VA adjudication regulations and to add § 3.815 to title 38, Code of Federal Regulations, to implement this new authority.

Effective December 1, 2001, 38 U.S.C. 1823 provides that receipt of this allowance shall not affect the right of the child, or the right of any individual, based on the child's relationship to that individual, to receive any other benefit to which the child, or that individual, may be entitled under any law administered by VA, nor will the allowance be considered income or resources in determining eligibility for, or the amount of, benefits under any Federal or federally-assisted program. We propose to amend 38 CFR 3.261, 3.262, 3.263, 3.272, and 3.275 to reflect this statutory provision as it applies to VA's income-based benefit programs.

We also propose to amend 38 CFR 3.27, 3.29, 3.31, 3.105, 3.114, 3.158, 3.216, 3.403, 3.500, and 3.503 so that regulations applying to adjustment of benefit rates, rounding of dollar figures of the monthly payment, commencement of the period of payment, revision of decisions, mandatory disclosure of social security numbers, abandonment of claims, and effective date of the award and of reductions and discontinuances, apply to these benefits.

Further, we propose to make non-substantive changes to 38 CFR 3.814 concerning the monetary allowance for individuals with spina bifida to reflect section 401 of Public Law 106–419, to make conforming changes, and to remove unnecessary or obsolete provisions.

In addition, we propose to make changes for purposes of clarity in § 3.814 and in other provisions mentioned above.

Until December 1, 2001, 38 U.S.C. chapter 18 is titled ''Benefits for Children of Vietnam Veterans Who Are Born with Spina Bifida.'' It provides benefits for the children of Vietnam veterans on the basis of a report by the Institute of Medicine (IOM) of the National Academy of Sciences called ''Veterans and Agent Orange: Update 1996,'' in which the IOM noted what it considered ''limited/suggestive evidence of an association'' between herbicide exposure and spina bifida in the offspring of Vietnam veterans. Effective December 1, 2001, 38 U.S.C. chapter 18 is retitled ''Benefits for Children of Vietnam Veterans.'' Statutory provisions that have been in 38 U.S.C. chapter 18 concerning benefits for individuals with spina bifida who are children of Vietnam veterans are amended effective December 1, 2001, to be in subchapter I of chapter 18, renamed ''Children of Vietnam Veterans Born with Spina Bifida.'' Subchapter II is added effective December 1, 2001, to chapter 18 and is titled ''Children of Women Vietnam Veterans Born with Certain Birth Defects.'' Subchapter III is added effective December 1, 2001, to chapter 18 and is titled ''General Provisions.'' That new subchapter contains provisions applicable to both categories of individuals.

The new statutory provisions, primarily 38 U.S.C. 1815, authorize VA to provide a monetary allowance for an individual with disability resulting from one or more covered birth defects who is a child of a woman Vietnam veteran. The statute is based on the results of a comprehensive health study by VA of 8,280 women Vietnam-era veterans (half of whom served in the Republic of Vietnam and half of whom served elsewhere) that was mandated by Public Law 99–272. The study, completed in October 1998, and titled ''Women Vietnam Veterans Reproductive Outcomes Health Study'' (VA study), was conducted by the Environmental Epidemiology Service of the Veterans Health Administration of the Department of Veterans Affairs. For purposes of satisfying the basic statistical requirement of independence of observations (i.e., in this study one pregnancy per woman), the VA study selected the first pregnancy after entrance date to Vietnam service, for women Vietnam veterans, as the ''index pregnancy.'' For the non-Vietnam group, the index pregnancy was defined as the first pregnancy after July 4, 1965. The VA study defined ''likely'' birth defects as congenital anomalies and included structural, functional, metabolic, and hereditary defects. It excluded developmental disorders, perinatal complications, miscellaneous pediatric illnesses, and conditions that were not classifiable. A report of part of the VA study, ''Pregnancy Outcomes Among U.S. Women Vietnam Veterans'' (Pregnancy Outcomes report), was published in the American Journal of Industrial Medicine (38:447–454 (2000)).

As provided in 38 U.S.C. 1815(c), the amount of the monthly monetary allowance payable to an individual with disability resulting from covered birth defects will be: For the lowest level of disability (Level I), $100; for the lower intermediate level of disability (Level

II), the greater of $214 or the monthly amount payable under 38 U.S.C. 1805(b)(3) for the lowest level of disability prescribed for an individual with spina bifida who is the child of a Vietnam veteran; for the higher intermediate level of disability (Level III), the greater of $743 or the monthly amount payable under 38 U.S.C. 1805(b)(3) for the intermediate level; for the highest level of disability (Level IV), the greater of $1272 or the monthly amount payable under 38 U.S.C. 1805(b)(3) for the highest level of disability.

We propose to amend 38 CFR 3.27, ''Automatic adjustment of benefit rates'' to reflect the amendments to 38 U.S.C. chapter 18. Under the provisions of 38 U.S.C. 1805(b)(3) and 1815(d), these amounts are subject to adjustment under the provisions of 38 U.S.C. 5312, which provide for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 *et seq.*).

We propose to amend the provisions of 38 CFR 3.29, ''Rounding'' to apply to increases in the monthly monetary amounts payable under 38 U.S.C. 1815. Whenever rates are increased under the provisions of 38 U.S.C. 5312, the Secretary may, under section 5312(c)(2), round those rates in such manner as the Secretary considers equitable and appropriate. The Secretary has determined that it is equitable and that, for ease of administration, it is appropriate to round up rate increases concerning the covered birth defects monetary benefit, as they are for the spina bifida monetary benefits. The proposed rule will amend § 3.29 accordingly.

We also propose to revise 38 CFR 3.31, ''Commencement of the period of payment''; 38 CFR 3.114, ''Change of law or Department of Veterans Affairs issue''; and 38 CFR 3.216, ''Mandatory disclosure of social security numbers'' to reflect that these provisions also apply to an individual with covered birth defects who is the child of a woman Vietnam veteran. All these provisions reflect statutory requirements.

Where a change in disability level warrants a reduction of the monetary allowance under 38 U.S.C. 1805 for individuals with spina bifida, the provisions of 38 CFR 3.105(g) direct VA to notify the beneficiary of the proposed reduction, allow the beneficiary 60 days to present evidence showing that the reduction should not occur, and provide that in the absence of such additional evidence the reduction will be effective the last day of the month following 60 days from the date of the notice. The proposed rule would expand the procedures to make them applicable to proposed reduction or discontinuance of any monetary allowance under 38 U.S.C. chapter 18. This reflects statutory requirements.

The provisions of 38 CFR 3.158 concern the circumstances under which VA will consider a claim abandoned. In view of the similarity between this benefit and other monetary benefits which VA administers, and in order to maintain consistency with respect to the administration of these benefits, we propose to apply these provisions to the monetary monthly allowance for individuals with covered birth defects, and we are proposing to amend 38 CFR 3.158 accordingly.

We propose to amend 38 CFR 3.403 by adding a new paragraph (c) to state that an award of the monetary allowance under 38 U.S.C. 1815 to or for an individual with covered birth defects who is a child of a woman Vietnam veteran will be the later of date of claim (or date of birth if a claim is received within one year of that date), the date entitlement arose, or December 1, 2001. This reflects statutory requirements.

VA is also proposing to amend 38 CFR 3.503 to specify that any monetary allowance under 38 U.S.C. chapter 18 will terminate the last day of the month before the month in which the death of a beneficiary occurs. This reflects statutory requirements.

VA is proposing to remove § 3.814(b), which sets forth an obsolete version of the ''Application for Spina Bifida Benefits'' form. The Office of Management and Budget has approved a revised version of the form.

We propose to add a new 38 CFR 3.815 to implement the provisions of 38 U.S.C. 1811, 1812, 1815, and 1821, as well as other provisions of 38 U.S.C. chapter 18, subchapters II and III. While § 3.815 primarily contains provisions concerning payment of monetary benefits, some of the proposed provisions of § 3.815 (for example, concerning whether an individual has a ''covered birth defect'') also would be used to determine eligibility for health care under 38 U.S.C. 1813 and vocational training under 38 U.S.C. 1814. Companion documents concerning the provision of health care (RIN 2900–AK88) and vocational training (RIN 2900–AK90) for certain children of Vietnam veterans with covered birth defects or spina bifida are set forth in the Proposed Rules section of this issue of the **Federal Register**.

In accordance with the statutory framework, paragraph (a)(1) of proposed § 3.815 provides that VA will pay a monthly allowance, under subchapter II of 38 U.S.C. chapter 18, to or for an individual whose biological mother is or was a Vietnam veteran and who VA has determined to have disability resulting from one or more covered birth defects. Paragraph (a)(1) further provides that, except as provided in paragraph (a)(3) of that section, the amount of the monetary allowance will be based on the level of disability suffered by an individual as determined in accordance with the provisions of paragraph (e), which sets forth criteria for evaluating levels of disability suffered by individuals with covered birth defects. Paragraph (a)(2) provides that no monetary allowance will be provided under this section to an individual based on disability from a particular birth defect in any case where affirmative evidence establishes that the birth defect results from a cause other than the active military, naval, or air service of that veteran during the Vietnam era and that, in determining the level of disability, VA will not consider the particular defect in question. This will not prevent VA from paying a monetary allowance under subchapter II of 38 U.S.C. chapter 18 for any other birth defect for which affirmative evidence of another cause does not exist. We believe these provisions accord with the statutory intent of 38 U.S.C. 1812.

Paragraph (a)(3) of proposed § 3.815 provides that, in the case of an individual (as defined in § 3.815(c)(2)) whose only covered birth defect is spina bifida, a monetary allowance will be paid under § 3.814, and not under § 3.815, nor will the individual be evaluated for disability under § 3.815. Thus, the individual's disability would be evaluated under § 3.814 (''Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran'') and the monetary allowance would be paid under the terms of that section. In the case of an individual who has spina bifida and one or more additional covered birth defects, a monetary allowance will be paid under § 3.815 and the amount of the monetary allowance will be not less than the amount the individual would receive if his or her only covered birth defect were spina bifida. If, but for application of this paragraph, the monetary allowance payable to or for the individual would be based on an evaluation at Level I, II, or III, respectively, under § 3.814(d), the evaluation of the individual's level of disability under paragraph (e) of this section would be not less than Level II, III or, IV, respectively. These provisions

reflect statutory requirements under 38 U.S.C. 1824(a) and our interpretation that Congress intended that the provisions of 38 U.S.C. 1824(a) are solely to provide for nonduplication of benefits between subchapters I and II, and are not intended in any other way to reduce the amount of monetary allowance that would be payable under 38 U.S.C. chapter 18 for an individual with spina bifida.

Paragraph (b) of proposed § 3.815 states, in accord with the statute, that receipt of the monetary allowance under 38 U.S.C. chapter 18 will not affect the right of the individual with covered birth defects, or the right of any person based on the individual's relationship to that person, to receive any other benefit to which the individual, or that person, may be entitled under any law administered by VA.

Paragraph (c)(1) of proposed § 3.815 contains a definition of ''Vietnam veteran'' for purposes of that section. The term ''Vietnam veteran'' is defined to mean a person who performed active military, naval, or air service in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, without regard to the characterization of the person's service. This reflects the statutory provisions in 38 U.S.C. 1821(2) and 1821(3)(B). We also propose to provide for purposes of § 3.815 that ''service in the Republic of Vietnam'' includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam. This is consistent with the definition of *service in the Republic of Vietnam* that appears at 38 CFR 3.307(a)(6)(iii).

Paragraph (c)(2) of proposed § 3.815 defines ''individual'' for purposes of that section to mean a person, regardless of age or marital status, whose biological mother is or was a Vietnam veteran and who was conceived after the date on which the veteran first entered the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975. Although 38 U.S.C. chapter 18 uses the terms ''child'' and ''children,'' many of those entitled to this benefit are now adolescents or adults. This definition will make it clear that these regulations apply to eligible persons regardless of age. Paragraph (c)(2) also provides that to establish whether a person is the biological son or daughter of a Vietnam veteran, VA will require the types of evidence specified in 38 CFR 3.209 and 3.210.

A birth defect is defined by the March of Dimes organization as an abnormality of structure, function, or metabolism, whether genetically determined or a result of environmental influence during embryonic or fetal life (*http://www.modimes.org*). Similar definitions are used by other State, national, and international organizations. The VA study of women Vietnam veterans did not define the term ''birth defects'' but stated that it included structural, functional, metabolic, and hereditary defects. It also stated that the causes of most congenital anomalies are unknown and that a combination of genetic and environmental factors may contribute to 20–25% of anomalies.

In the VA study, ''likely'' birth defects, reported by women Vietnam veterans in their children, were divided by pediatricians who reviewed the mothers' descriptions of the defects into the following seven categories: chromosomal abnormality; multiple anomalies (except chromosomal and heritable genetic); isolated anomaly; congenital neoplasms; heritable genetic disease; undescribed isolated heart abnormality; and other poorly described defect (non-cardiac). The VA study stated that there is a notable lack of difference between the children of women Vietnam veterans and the children of women non-Vietnam veterans for classes of known genetic/heritable conditions (including congenital malignancies). In the children resulting from index pregnancies, there was one congenital malignancy in a child of a Vietnam veteran and one in a child of a non-Vietnam veteran; there were four cases of heritable genetic disease in each group of veterans; and there were three chromosomal abnormalities in children of Vietnam veterans and four in the children of non-Vietnam veterans. Thus, the VA study provides no evidence of an association between service in Vietnam and three of the seven categories (chromosomal abnormalities, congenital malignancies, and heritable genetic diseases). Since under 38 U.S.C. 1812(a)(1) VA has authority to identify birth defects of children of women Vietnam veterans as covered birth defects only if the birth defects ''are associated with the service of those veterans in the Republic of Vietnam during the Vietnam era,'' we believe it would not be appropriate to identify these three categories of birth defects as covered birth defects. Other conditions reported by the mother as birth defects that were something else included developmental disorders, such as autism, and miscellaneous pediatric conditions, such as asthma.

In addition, the statute specifically excludes familial disorders, birth-related injuries, and fetal or neonatal infirmities with well-established causes from the category of covered birth defects.

Therefore, we propose in paragraph (c)(3) of § 3.815 to define the term ''covered birth defect'' for purposes of that section to mean:

> [A]ny birth defect identified by VA as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, and that has resulted, or may result, in permanent physical or mental disability. However, the term *covered birth defect* does not include a condition due to a:
>
> (i) Familial disorder;
> (ii) Birth-related injury; or
> (iii) Fetal or neonatal infirmity with well-established causes.

We believe that this definition reflects the intent of Congress with respect to provision of benefits for individuals under 38 U.S.C. chapter 18, subchapters II and III.

In paragraph (d) of proposed § 3.815, VA lists some, but not all, specific conditions that VA would identify or would not identify as covered birth defects. Paragraph (d)(1) contains a list, based on the VA study, of some, but not all, conditions that VA would consider to be covered birth defects, unless a condition is familial in a particular case. Each of paragraphs (d)(2) through (d)(8) contains a non-exclusive list of certain conditions that, for different reasons, VA would not consider to be covered birth defects. Because of the vast number of possible birth defects, and the fact that many are sometimes familial and sometimes not (when they arise de novo, or anew, in a particular individual), it is not practical to develop an exclusive or definitive list in proposed § 3.815(d). For example, achondroplasia and Marfan syndrome are sometimes familial and sometimes not. We propose to include achondroplasia in the list of covered birth defects because 75% of cases are due to gene mutation (*www.med.jhu.edu/Greenberg.Center/achon.htm*) rather than being familial, but it will not be a covered birth defect in any case where it is determined to be familial. On the other hand, Marfan syndrome is familial in two-thirds to three-quarters of cases (*www.marfan.org*), so we propose to exclude it as a covered birth defect, unless there is no indication that it is familial in a particular family, in which case it would not be excluded as familial.

Proposed § 3.815(d)(1) states that covered birth defects include, but are not limited to, the following (but that if a birth defect is determined to be familial in a particular family, it would

not be a covered birth defect): achondroplasia, cleft lip and cleft palate, congenital heart disease, congenital talipes equinovarus (clubfoot), esophageal and intestinal atresia, Hallerman-Streiff syndrome, hip dysplasia, Hirschprung's disease (congenital megacolon), hydrocephalus due to aqueductal stenosis, hypospadias, imperforate anus, neural tube defects (including spina bifida, encephalocele, and anencephaly), Poland syndrome, pyloric stenosis, syndactyly (fused digits), tracheoesophageal fistula, undescended testicle, and Williams syndrome.

Familial, according to Dorland's Illustrated Medical Dictionary, 27th edition (1988), means occurring or affecting more members of a family than would be expected by chance. The category of familial disorders includes all heritable (that is, hereditary) genetic conditions, but not all genetic conditions, because a genetic mutation may arise for the first time during early development and not be hereditary. In that case, the parents would not have the genetic disorder, and the condition would not be familial.

Proposed § 3.815(d)(2) states generally that conditions that are familial disorders, including hereditary genetic conditions (as they are called in the VA study) are not covered birth defects. However, as proposed § 3.815(d)(2) also provides, if a birth defect is not familial in a particular family, VA would not consider it to be a familial disorder. (Thus, it would be a covered birth defect unless excluded under another provision of paragraph (d).) It states that familial disorders include, but are not limited to, the following, unless not familial in a particular family: albinism, alpha-antitrypsin deficiency, Crouzon syndrome, cystic fibrosis, Duchenne's muscular dystrophy, galactosemia, hemophilia, Huntington's disease, Hurler syndrome, Kartagener's syndrome (Primary Ciliary Dyskinesia), Marfan syndrome, neurofibromatosis, osteogenesis imperfecta, pectus excavatum, phenylketonuria, sickle cell disease, Tay-Sachs disease, thalassemia, and Wilson's disease (the VA study, The Merck Manual). These and other conditions, depending on the circumstances, may or may not be familial. For example, pectus excavatum is generally considered to be a familial birth defect but may also occur in the absence of a family history. Congenital blindness has some established causes, such as maternal rubella during pregnancy or metabolic disorders, but in other cases, it has no established cause and would be a covered birth defect. Similarly, congenital deafness may be familial or may be due to an unknown cause. Some types of hydrocephalus are due to maternal infection and some have no known cause. Whether the disease is familial or not will be reported in most cases in medical records containing a family history.

Proposed § 3.815(d)(3) states that congenital malignant neoplasms (referred to in the VA study as congenital malignancies) are not covered birth defects. It states that these include, but are not limited to, the following: medulloblastoma, neuroblastoma, retinoblastoma, teratoma, and Wilm's tumor (The Merck Manual (17th edition, 1999 *http://www.neonatology.org/ syllabus/ teratoma.html, http://cancer.med.upenn.edu/pdq_html/1/engl/ 100048.html,* and *http://cancernet.nci.nih.gov/clinpdq/pif.html*).

Proposed § 3.815(d)(4) states that chromosomal abnormalities are not covered birth defects. It states that these include, but are not limited to, the following: Down syndrome and other Trisomies, Fragile X syndrome, Klinefelter's syndrome, Turner syndrome (the VA study, The Merck Manual).

Proposed § 3.815(d)(5) states that conditions that are due to birth-related injury are not covered birth defects. It states that these conditions include, but are not limited to, the following: brain damage due to anoxia during or around the time of birth; cases of cerebral palsy due to birth trauma; facial nerve palsy or other peripheral nerve injury; fractured clavicle; and Horner's syndrome due to forceful manipulation during birth.

Proposed § 3.815(d)(6) states that conditions that are due to a fetal or neonatal infirmity with well-established causes or that are miscellaneous pediatric conditions are not covered birth defects. VA considers that these include, but are not limited to, the effects of maternal infection during pregnancy, such as rubella, toxoplasmosis, or syphilis, and include fetal alcohol syndrome or fetal effects of maternal drug use (known to result from maternal use of alcohol or drugs during pregnancy). Miscellaneous pediatric conditions are conditions which the Pregnancy Outcomes report discusses as ''unlikely birth defects.'' They were reported by the mother in telephone interviews as birth defects, but pediatricians determined them to be pediatric conditions rather than birth defects. Accordingly, proposed § 3.815(d)(6) states that the following are not covered birth defects: asthma and other allergies, hyaline membrane disease, maternal-infant blood incompatibility, neonatal infections, neonatal jaundice, post-infancy deafness/hearing impairment (occurring after the age of one year), prematurity, and refractive disorders of the eye (for example, farsightedness and astigmatism).

Proposed § 3.815(d)(7) states that developmental disorders are not covered birth defects. VA considers that the following, which are listed in proposed § 3.815(d)(7), are developmental disorders rather than birth defects: attention deficit disorder; autism; epilepsy diagnosed after infancy (after the age of one year); learning disorders; and mental retardation (unless part of a syndrome that is a covered birth defect) (the VA study, *http://www.autism-society.org/whatisautism/autism.html#causes,* and *http://www.cdc.gov/nceh/cddh/ddhome.htm).*

Proposed § 3.815(d)(8) states that conditions that do not result in permanent physical or mental disability are not covered birth defects. VA believes that these include, but are not limited to, the following, which are listed in proposed § 3.815(d)(8): conditions rendered non-disabling through treatment; congenital heart problems surgically corrected or resolved without disabling residuals; heart murmurs unassociated with a diagnosed cardiac abnormality; hemangiomas that have resolved with or without treatment; and scars (other than of the head, face, or neck) as the only residual of corrective surgery for birth defects.

Paragraph (h) of proposed § 3.815 provides that if a regional office is unclear in any case as to whether a condition is a covered birth defect it may refer the issue to the Director of the Compensation and Pension Service to make the determination as to whether a condition is a covered birth defect.

Paragraph (e) of proposed § 3.815 provides, in accordance with 38 U.S.C. 1815(a) and (b), that VA will determine the level of disability currently resulting, in combination, from an individual's covered birth defects and associated disabilities. It further provides that no monetary allowance will be payable under subchapter II of 38 U.S.C. chapter 18 if VA determines under this paragraph that an individual has no current disability resulting from the covered birth defects, unless VA determines that the provisions of paragraph (a)(3) of this section are for application. Also, as required by 38 U.S.C. 1815(b), paragraph (e) sets forth a schedule for rating disabilities resulting from covered birth defects at four levels of disability, identified as

Level I, Level II, Level III, and Level IV, with Level I having the lowest, and Level IV the highest, level of disability. The schedule also includes Level 0 when VA determines that an individual has one or more covered birth defects, but has no current disability resulting therefrom. Disability determinations would be based on an assessment of the effect on day-to-day functioning or the extent of disfigurement of the head, face, or neck due to one or more covered birth defects or associated disabilities. These proposed criteria are necessarily broad because of the array of potential disabilities affecting any body system or multiple systems and are designed to be applicable to the widest possible variety of disabilities. We propose that the functions to be considered in assessing limitation of daily activities be mobility (ability to stand and walk, including balance and coordination), manual dexterity, stamina, speech, hearing, vision (other than correctable refraction errors), memory, ability to concentrate, appropriateness of behavior, and urinary and fecal continence. While disfigurement does not necessarily limit any of these functions, although it may limit communication, it may, in our judgment, and based on our experience with disability assessment in veterans, be significantly disabling in and of itself, and we are therefore proposing to include it in the criteria. These are similar to the types of functional impairments described in literature pertaining to disabilities, for example, in Americans with Disabilities Act (ADA) documents, such as the Glossary of Common Characteristics and Limitations of Disabilities in ADA Handbook, Appendix IV and ADA Title III Regulations, and in a 1997 Institute of Medicine document, ''Enabling America: Assessing the Role of Rehabilitation Science and Engineering.''

We propose that Level I be assigned if the individual has residual physical or mental effects that only occasionally or intermittently limit or prevent some daily activities, or the individual has disfigurement or scarring of the head, face, or neck without gross distortion or gross asymmetry of any facial feature (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips). We propose that Level II be assigned if the individual has residual physical or mental effects that frequently or constantly limit or prevent some daily activities, but the individual is able to work or attend school, carry out most household chores, travel, and provide age-appropriate self-care such as eating, dressing, grooming, and carrying out personal hygiene, and communication, behavior, social interaction, and intellectual functioning are appropriate for age; or, the individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of one facial feature or one paired set of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips). We propose that Level III be assigned on one of four bases: if the individual has residual physical or mental effects that frequently or constantly limit or prevent most daily activities but the individual is able to provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene; the individual is unable to work or attend school, travel, or carry out household chores, or does so intermittently and with difficulty; the individual's communication, behavior, social interaction, and intellectual functioning are not entirely appropriate for age; or the individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of two facial features or two paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips). We propose that Level IV be assigned on one of three bases: if the individual has residual physical or mental effects that prevent age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene; communication, behavior, social interaction, and intellectual functioning are grossly inappropriate for age; or the individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of three facial features or three paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips). We believe these criteria will establish objective measures to identify discrete levels of disability, in accordance with the payment levels established by Congress that can be applied consistently.

Because VA medical facilities generally provide examination and care only to veterans, VA lacks pediatric examiners and pediatric specialists and some of the other specialists who might participate in the evaluation and care of individuals with covered birth defects. Therefore, paragraph (f) of proposed § 3.815 provides that VA may accept statements from private physicians, as well as examination reports from government or private institutions, for the purposes of determining whether an individual has a covered birth defect and rating claims from individuals with covered birth defects. It also provides that if they are adequate for such purposes, VA may make the determination and rating without further examination.

Paragraph (g) of proposed § 3.815 provides that VA will reconsider its determination that an individual has a covered birth defect and/or the level of disability due to covered birth defects whenever it receives medical evidence indicating that a change is warranted. In general, we believe that the severity of these conditions will be stable but that this provision provides a reasonable procedure for evaluating those that are not.

Paragraph (i) of proposed § 3.815 contains effective date provisions for awards, and increases, of the monetary allowance under 38 U.S.C. chapter 18, subchapter II. Paragraph (j) of proposed § 3.815 contains provisions concerning reductions and discontinuances of that monetary allowance. These reflect statutory requirements.

Comment Period

We are providing a comment period of 30 days for this proposed rule due to the December 1, 2001, effective date of the new benefit programs enacted by section 401 of Public Law 106–419, the statutory requirement for a final rule prior to that date, and the need to have a final rule as soon as possible that would enable identification of, and evaluation of disability from, covered birth defects in order to avoid delay in the commencement of those benefits.

Paperwork Reduction Act of 1995

This proposed rule would remove the approved information collection provisions contained in 38 CFR 3.814 as unnecessary or obsolete. The version of the ''Application for Spina Bifida Benefits'' form that is published in § 3.814(b) is no longer being used. The Office of Management and Budget (OMB) has approved a revision of the form, under the same OMB control number, 2900–0572. VA intends to seek from OMB approval under the Paperwork Reduction Act for further modifications to that form. This proposed rule does not contain provisions constituting new collections of information under the Paperwork Reduction Act. Any provisions that might otherwise require approval as a modification to an information collection would not affect 10 or more persons in a twelve-month period.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that these regulatory amendments would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers for benefits affected by this rule are 64.104, 64.109, 64.127, and 64.128. There are no Catalog of Federal Domestic Assistance program numbers for other benefits affected by this rule.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: October 26, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.27, paragraphs (c) and (d) are revised to read as follows:

§ 3.27 Automatic adjustment of benefit rates.

* * * * *

(c) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage the monthly allowance under 38 U.S.C. chapter 18.

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312)

(d) *Publishing requirements.* Increases in pension rates, parents' dependency and indemnity compensation rates and income limitation, and the monthly allowance under 38 U.S.C. chapter 18 made under this section shall be published in the **Federal Register**.

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312(c)(1))

3. In § 3.29, paragraph (c) is revised to read as follows:

§ 3.29 Rounding

* * * * *

(c) *Monthly rates under 38 U.S.C. chapter 18.* When increasing the monthly monetary allowance rates under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans, VA will round any resulting rate that is not an even dollar amount to the next higher dollar.

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312)

§ 3.31 [Amended]

4. Section 3.31 is amended by:

a. In the introductory text, removing ''the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida'' and adding, in its place, ''a monetary allowance under 38 U.S.C. chapter 18 for an individual''.

b. In paragraph (c)(4)(ii), removing ''the monetary allowance for children suffering from spina bifida'' and adding, in its place, ''a monetary allowance under 38 U.S.C. chapter 18''.

c. Revising the authority citation.

The revision reads as follows:

§ 3.31 Commencement of the period of payment.

* * * * *

(Authority: 38 U.S.C. 1822, 5111)

5. In § 3.105, paragraph (g) is revised to read as follows:

§ 3.105 Revision of decisions.

* * * * *

(g) *Reduction in evaluation—monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* Where a reduction or discontinuance of a monetary allowance currently being paid under 38 U.S.C. chapter 18 is considered warranted, VA will notify the beneficiary at his or her latest address of record of the proposed reduction, furnish detailed reasons therefor, and allow the beneficiary 60 days to present additional evidence to show that the monetary allowance should be continued at the present level. Unless otherwise provided in paragraph (i) of this section, if VA does not receive additional evidence within that period, it will take final rating action and reduce the award effective the last day of the month following 60 days from the date of notice to the beneficiary of the proposed reduction.

(Authority: 38 U.S.C. 1822, 5112(b)(6))

* * * * *

§ 3.114 [Amended]

6. Section 3.114 is amended by:

a. In the introductory text of paragraph (a), removing ''the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida'' each place it appears and adding, in its place, ''a monetary allowance under 38 U.S.C. chapter 18 for an individual''.

b. Revising the authority citation at the end of paragraph (a).

The revision reads as follows:

§ 3.114 Change of law or Department of Veterans Affairs issue.

* * * * *

(Authority: 38 U.S.C. 1822, 5110(g))

* * * * *

§ 3.158 [Amended]

7. In § 3.158, paragraphs (a) and (c) are amended by removing ''1805'' and adding, in its place, ''chapter 18''.

§ 3.216 [Amended]

8. Section 3.216 is amended by:

a. Removing ''or the monetary allowance for a child suffering from spina bifida who is a child of a Vietnam veteran under § 3.814 of this part'' and adding, in its place, ''a monetary allowance under 38 U.S.C. chapter 18''.

b. Revising the authority citation.

The revision reads as follows:

§ 3.216 Mandatory disclosure of social security numbers.

* * * * *

(Authority: 38 U.S.C. 1822, 5101(c))

* * * * *

9. In § 3.261, paragraph (a)(40) is revised to read as follows:

§ 3.261 Character of income; exclusions and estates.

* * * * *

(a) * * *

Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; old-law (veterans, surviving spouses and children)	Pension; Section 306 (veterans, surviving spouses and children)	See—
* * *	*	*	*	*	*
(40) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans (38 U.S.C. 1823(c)).	Excluded	Excluded	Excluded	Excluded	§ 3.262(y)

10. In § 3.262, paragraph (y) is revised to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(y) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* There shall be excluded from income computation any allowance paid under the provisions of 38 U.S.C. 18 to or for an individual who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

11. In § 3.263, paragraph (g) is revised to read as follows:

§ 3.263 Corpus of estate; net worth.

* * * * *

(g) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

12. In § 3.272, paragraph (u) is revised to read as follows:

§ 3.272 Exclusions from income.

* * * * *

(u) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* Any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

13. In § 3.275, paragraph (i) is revised to read as follows:

§ 3.275 Criteria for evaluating net worth.

* * * * *

(i) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

14. In § 3.403, paragraph (b) is revised and paragraph (c) is added, to read as follows:

§ 3.403 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. 1805 for an individual suffering from spina bifida who is a child of a Vietnam veteran.* An award of the monetary allowance under 38 U.S.C. 1805 to or for an individual suffering from spina bifida who is a child of a Vietnam veteran will be effective either date of birth if claim is received within one year of that date, or date of claim, but not earlier than October 1, 1997.

(Authority: 38 U.S.C. 1822, 5110; sec. 422(c), Pub. L. 104–204, 110 Stat. 2926)

(c) *Monetary allowance under 38 U.S.C. 1815 for an individual with covered birth defects who is a child of a woman Vietnam veteran.* Except as provided in § 3.114(a) or § 3.815(i), an award of the monetary allowance under 38 U.S.C. 1815 to or for an individual with one or more covered birth defects who is a child of a woman Vietnam veteran will be effective as of the date VA received the claim (or the date of birth if the claim is received within one year of that date), the date entitlement arose, or December 1, 2001, whichever is later.

(Authority: 38 U.S.C. 1815, 1822, 1824, 5110)

15. In § 3.503, paragraph (b) is revised to read as follows:

§ 3.503 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* The effective date of discontinuance of the monthly allowance under 38 U.S.C. chapter 18 will be the last day of the month before the month in which the death of the individual occurred.

(Authority: 38 U.S.C. 1822, 5112(b))

16. Section 3.814 is amended by:

a. Revising the section heading.

b. Adding a heading to paragraph (a).

c. In paragraph (a), revising the first sentence and, in the second sentence, removing ''other related individual'' and adding, in its place, ''related person''.

d. Removing and reserving paragraph (b).

e. In paragraph (c)(1), removing ''an individual'' and adding, in its place, ''a person'' and removing ''individual's'' and adding, in its place, ''person's''.

f. In paragraph (c)(2), removing ''§ .3.204(a)(1), VA shall'' and adding, in its place, ''§ 3.204(a)(1), VA will'' and by removing ''an individual's biological father or mother is or was'' and adding, in its place, ''a person is the biological son or daughter of''.

g. Removing designation ''(d)'' from paragraph (d)(1) and by adding a heading for paragraph (d).

h. Removing the authority citation at the end of paragraph (d).

i. In paragraph (e), removing ''children'' and adding, in its place, ''an individual''.

j. Revising the authority citation at the end of the section.

The revisions and additions read as follows:

§ 3.814 Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran.

(a) *Monthly monetary allowance.* VA will pay a monthly monetary allowance under subchapter I of 38 U.S.C. chapter 18, based upon the level of disability determined under the provisions of paragraph (d) of this section, to or for a person who VA has determined is an individual suffering from spina bifida whose biological mother or father is or was a Vietnam veteran. * * *

* * * * *

(d) *Disability evaluations.* * * *

* * * * *

(Authority: 38 U.S.C. 501, 1805, 1811, 1812, 1821, 1822, 1823, 1824, 5101, 5110, 5111, 5112)

17. Section 3.815 is added to read as follows:

§ 3.815 Monetary allowance under 38 U.S.C. chapter 18 for an individual with disability from covered birth defects whose biological mother is or was a Vietnam veteran; identification of covered birth defects.

(a) *Monthly monetary allowance.* (1) *General.* VA will pay a monthly monetary allowance under subchapter II of 38 U.S.C. chapter 18 to or for an individual whose biological mother is or was a Vietnam veteran and who VA has determined to have disability resulting from one or more covered birth defects. Except as provided in paragraph (a)(3) of this section, the amount of the monetary allowance paid will be based upon the level of such disability suffered by the individual, as determined in accordance with the provisions of paragraph (e) of this section.

(2) *Affirmative evidence of cause other than mother's service during Vietnam era.* No monetary allowance will be provided under this section based on a particular birth defect of an individual in any case where affirmative evidence establishes that the birth defect results from a cause other than the active military, naval, or air service of the individual's mother during the Vietnam era and, in determining the level of disability for an individual with more than one birth defect, the particular defect resulting from other causes will be excluded from consideration. This will not prevent VA from paying a monetary allowance under this section for other birth defects.

(3) *Nonduplication; spina bifida.* In the case of an individual whose only covered birth defect is spina bifida, a monetary allowance will be paid under § 3.814, and not under this section, nor will the individual be evaluated for disability under this section. In the case of an individual who has spina bifida and one or more additional covered birth defects, a monetary allowance will be paid under this section and the amount of the monetary allowance will be not less than the amount the individual would receive if his or her only covered birth defect were spina bifida. If, but for the individual's one or more additional covered birth defects, the monetary allowance payable to or for the individual would be based on an evaluation at Level I, II, or III, respectively, under § 3.814(d), the evaluation of the individual's level of disability under paragraph (e) of this section will be not less than Level II, III or, IV, respectively.

(b) *No effect on other VA benefits.* Receipt of a monetary allowance under 38 U.S.C. chapter 18 will not affect the right of the individual, or the right of any person based on the individual's relationship to that person, to receive any other benefit to which the individual, or that person, may be entitled under any law administered by VA.

(c) *Definitions.* (1) *Vietnam veteran.* For the purposes of this section, the term *Vietnam veteran* means a person who performed active military, naval, or air service in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, without regard to the characterization of the person's service. Service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) *Individual.* For the purposes of this section, the term *individual* means a person, regardless of age or marital status, whose biological mother is or was a Vietnam veteran and who was conceived after the date on which the veteran first entered the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975. Notwithstanding the provisions of § 3.204(a)(1), VA will require the types of evidence specified in §§ 3.209 and 3.210 sufficient to establish that a person is the biological son or daughter of a Vietnam veteran.

(3) *Covered birth defect.* For the purposes of this section the term *covered birth defect* means any birth defect identified by VA as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, and that has resulted, or may result, in permanent physical or mental disability. However, the term *covered birth defect* does not include a condition due to a:

(i) Familial disorder;
(ii) Birth-related injury; or
(iii) Fetal or neonatal infirmity with well-established causes.

(d) *Identification of covered birth defects.* All birth defects that are not excluded under the provisions of this paragraph are covered birth defects.

(1) Covered birth defects include, but are not limited to, the following (however, if a birth defect is determined to be familial in a particular family, it will not be a covered birth defect):

(i) Achondroplasia;
(ii) Cleft lip and cleft palate;
(iii) Congenital heart disease;
(iv) Congenital talipes equinovarus (clubfoot);
(v) Esophageal and intestinal atresia;
(vi) Hallerman-Streiff syndrome;
(vii) Hip dysplasia;
(viii) Hirschprung's disease (congenital megacolon);
(ix) Hydrocephalus due to aqueductal stenosis;
(x) Hypospadias;
(xi) Imperforate anus;
(xii) Neural tube defects (including spina bifida, encephalocele, and anencephaly);
(xiii) Poland syndrome;
(xiv) Pyloric stenosis;
(xv) Syndactyly (fused digits);
(xvi) Tracheoesophageal fistula;
(xvii) Undescended testicle; and
(xviii) Williams syndrome.

(2) Birth defects that are familial disorders, including hereditary genetic conditions, are not covered birth defects. Familial disorders include, but are not limited to, the following, unless the birth defect is not familial in a particular family:

(i) Albinism;
(ii) Alpha-antitrypsin deficiency;
(iii) Crouzon syndrome;
(iv) Cystic fibrosis;
(v) Duchenne's muscular dystrophy;
(vi) Galactosemia;
(vii) Hemophilia;
(viii) Huntington's disease;
(ix) Hurler syndrome;
(x) Kartagener's syndrome (Primary Ciliary Dyskinesia);
(xi) Marfan syndrome;
(xii) Neurofibromatosis;
(xiii) Osteogenesis imperfecta;
(xiv) Pectus excavatum;
(xv) Phenylketonuria;
(xvi) Sickle cell disease;
(xvii) Tay-Sachs disease;
(xviii) Thalassemia; and
(xix) Wilson's disease.

(3) Conditions that are congenital malignant neoplasms are not covered birth defects. These include, but are not limited to, the following:

(i) Medulloblastoma;
(ii) Neuroblastoma;
(iii) Retinoblastoma;
(iv) Teratoma; and
(v) Wilm's tumor.

(4) Conditions that are chromosomal disorders are not covered birth defects. These include, but are not limited to, the following:

(i) Down syndrome and other Trisomies;
(ii) Fragile X syndrome;
(iii) Klinefelter's syndrome; and
(iv) Turner's syndrome.

(5) Conditions that are due to birth-related injury are not covered birth defects. These include, but are not limited to, the following:

(i) Brain damage due to anoxia during or around time of birth;

(ii) Cerebral palsy due to birth trauma,
(iii) Facial nerve palsy or other peripheral nerve injury;
(iv) Fractured clavicle; and
(v) Horner's syndrome due to forceful manipulation during birth.

(6) Conditions that are due to a fetal or neonatal infirmity with well-established causes or that are miscellaneous pediatric conditions are not covered birth defects. These include, but are not limited to, the following:

(i) Asthma and other allergies;
(ii) Effects of maternal infection during pregnancy, including but not limited to, maternal rubella, toxoplasmosis, or syphilis;
(iii) Fetal alcohol syndrome or fetal effects of maternal drug use;
(iv) Hyaline membrane disease;
(v) Maternal-infant blood incompatibility;
(vi) Neonatal infections;
(vii) Neonatal jaundice;
(viii) Post-infancy deafness/hearing impairment (onset after the age of one year);
(ix) Prematurity; and
(x) Refractive disorders of the eye.

(7) Conditions that are developmental disorders are not covered birth defects. These include, but are not limited to, the following:

(i) Attention deficit disorder;
(ii) Autism;
(iii) Epilepsy diagnosed after infancy (after the age of one year);
(iv) Learning disorders; and
(v) Mental retardation (unless part of a syndrome that is a covered birth defect).

(8) Conditions that do not result in permanent physical or mental disability are not covered birth defects. These include, but are not limited to:

(i) Conditions rendered non-disabling through treatment;
(ii) Congenital heart problems surgically corrected or resolved without disabling residuals;
(iii) Heart murmurs unassociated with a diagnosed cardiac abnormality;
(iv) Hemangiomas that have resolved with or without treatment; and
(v) Scars (other than of the head, face, or neck) as the only residual of corrective surgery for birth defects.

(e) *Disability evaluations.* Whenever VA determines, upon receipt of competent medical evidence, that an individual has one or more covered birth defects, VA will determine the level of disability currently resulting, in combination, from the covered birth defects and associated disabilities. No monetary allowance will be payable under this section if VA determines under this paragraph that an individual has no current disability resulting from the covered birth defects, unless VA determines that the provisions of paragraph (a)(3) of this section are for application. Except as otherwise provided in paragraph (a)(3) of this section, VA will determine the level of disability as follows:

(1) *Levels of disability.*

(i) *Level 0.* The individual has no current disability resulting from covered birth defects.

(ii) *Level I.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that only occasionally or intermittently limit or prevent some daily activities; or

(B) The individual has disfigurement or scarring of the head, face, or neck without gross distortion or gross asymmetry of any facial feature (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(iii) *Level II.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that frequently or constantly limit or prevent some daily activities, but the individual is able to work or attend school, carry out most household chores, travel, and provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene, and communication, behavior, social interaction, and intellectual functioning are appropriate for age; or

(B) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of one facial feature or one paired set of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(iv) *Level III.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that frequently or constantly limit or prevent most daily activities, but the individual is able to provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene;

(B) The individual is unable to work or attend school, travel, or carry out household chores, or does so intermittently and with difficulty;

(C) The individual's communication, behavior, social interaction, and intellectual functioning are not entirely appropriate for age; or

(D) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of two facial features or two paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(v) *Level IV.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that prevent age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene;

(B) The individual's communication, behavior, social interaction, and intellectual functioning are grossly inappropriate for age; or

(C) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of three facial features or three paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(2) *Assessing limitation of daily activities.* Physical or mental effects on the following functions are to be considered in assessing limitation of daily activities:

(i) Mobility (ability to stand and walk, including balance and coordination);
(ii) Manual dexterity;
(iii) Stamina;
(iv) Speech;
(v) Hearing;
(vi) Vision (other than correctable refraction errors);
(vii) Memory;
(viii) Ability to concentrate;
(ix) Appropriateness of behavior; and
(x) Urinary and fecal continence.

(f) *Information for determining whether individuals have covered birth defects and rating disability levels.* (1) VA may accept statements from private physicians, or examination reports from government or private institutions, for the purposes of determining whether an individual has a covered birth defect and for rating claims for covered birth defects. If they are adequate for such purposes, VA may make the determination and rating without further examination. In the absence of adequate information, VA may schedule examinations for the purpose of determining whether an individual has a covered birth defect and/or assessing the level of disability.

(2) Except in accordance with paragraph (a)(3) of this section, VA will not pay a monthly monetary allowance unless or until VA is able to obtain medical evidence adequate to determine that an individual has a covered birth defect and adequate to assess the level of disability due to covered birth defects.

(g) *Redeterminations.* VA will reassess a determination under this section whenever it receives evidence indicating that a change is warranted.

(h) *Referrals.* If a regional office is unclear in any case as to whether a condition is a covered birth defect, it may refer the issue to the Director of the Compensation and Pension Service for determination.

(i) *Effective dates.* Except as provided in § 3.114(a) or paragraph (i)(1) or (2) of this section, VA will award the monetary allowance under subchapter II of 38 U.S.C. chapter 18, for an individual with disability resulting from one or more covered birth defects, based on an original claim, a claim reopened after final disallowance, or a claim for increase, as of the date VA received the claim (or the date of birth if the claim is received within one year of that date), the date entitlement arose, or December 1, 2001, whichever is later. Subject to the condition that no benefits may be paid for any period prior to December 1, 2001:

(1) VA will increase benefits as of the earliest date the evidence establishes that the level of severity increased, but only if the beneficiary applies for an increase within one year of that date.

(2) If a claimant reopens a previously disallowed claim based on corrected military records, VA will award the benefit from the latest of the following dates: the date the veteran or beneficiary applied for a correction of the military records; the date the disallowed claim was filed; or, the date one year before the date of receipt of the reopened claim.

(j) *Reductions and discontinuances.* VA will generally reduce or discontinue awards under subchapter II of 38 U.S.C. chapter 18 according to the facts found except as provided in §§ 3.105 and 3.114(b).

(1) If benefits were paid erroneously because of beneficiary error, VA will reduce or discontinue benefits as of the effective date of the erroneous award.

(2) If benefits were paid erroneously because of administrative error, VA will reduce or discontinue benefits as of the date of last payment.

(Authority: 38 U.S.C. 501, 1811, 1812, 1813, 1814, 1815, 1816, 1821, 1822, 1823, 1824, 5101, 5110, 5111, 5112)

[FR Doc. 01–31673 Filed 12–31–01; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK88

Health Care for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish regulations regarding health care benefits for women Vietnam veterans' children with covered birth defects. It would revise the current regulations regarding health care for Vietnam veterans' children suffering from spina bifida to also encompass health care for women Vietnam veterans' children with certain other birth defects. This is necessary to provide health care for such children in accordance with recently enacted legislation. The revisions would also reduce the requirements for preauthorization, reflect changes in organizational and personnel titles, revise contact information for the VHA Health Administration Center, and make nonsubstantive changes for purposes of clarity. Companion documents entitled ''Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects'' (RIN 2900–AK67) and ''Vocational Training for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida'' (RIN 2900–AK90) are set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Comments must be received by VA on or before February 1, 2002, except that comments on the information collection provisions in this document must be received on or before March 4, 2002.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Room 1154, 810 Vermont Ave., NW, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK88.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). In addition, see the Paperwork Reduction Act heading under the **SUPPLEMENTARY INFORMATION** section of this preamble regarding submission of comments on the information collection provisions.

FOR FURTHER INFORMATION CONTACT: Susan Schmetzer, Chief, Policy & Compliance Division, VHA Health Administration Center, Department of Veterans Affairs, P.O. Box 65020, Denver, CO 80206, telephone (303) 331–7552.

SUPPLEMENTARY INFORMATION: Prior to the enactment of Public Law 106–419 on November 1, 2000, the provisions of 38 U.S.C. chapter 18 only concerned benefits for children with spina bifida who were born to Vietnam veterans. Effective December 1, 2001, section 401 of Public Law 106–419 amends 38 U.S.C. chapter 18 to add benefits for women Vietnam veterans' children with certain birth defects (referred to below as ''covered birth defects'').

As amended, 38 U.S.C. chapter 18 provides for three separate types of benefits for women Vietnam veterans' children who suffer from covered birth defects as well as for Vietnam veterans' children who suffer from spina bifida: (1) Monthly monetary allowances for various disability levels; (2) provision of health care needed for the child's spina bifida or covered birth defects; and (3) provision of vocational training and rehabilitation.

This document proposes to amend VA's ''Medical'' regulations (38 CFR part 17) by revising the regulations in §§ 17.900 through 17.905 concerning the provision of health care. These regulations currently only concern the provision of health care for Vietnam veterans' children with spina bifida. This document proposes to revise the regulations by adding women Vietnam veterans' children with covered birth defects to the existing regulatory framework. The revisions would also reduce the requirements for preauthorization, reflect changes in organizational and personnel titles, revise contact information for the VHA Health Administration Center, and make nonsubstantive changes for purposes of clarity. As the proposed rule provides, the mailing address for the VHA Health Administration Center for spina bifida is P.O. Box 65025, Denver, CO 80206–9025 and for covered birth defects is P.O. Box 469027, Denver, CO 80246–9027.

As a condition of eligibility for the provision of health care for women Vietnam veterans' children with covered birth defects, it is proposed that the child must be an *individual* determined to have a *covered birth defect* under 38 CFR 3.815. (Definitions of the terms *individual* and *covered birth defect* and provisions concerning

identification of covered birth defects are included in proposed § 3.815 set forth in the companion document concerning monetary allowances and identification of covered birth defects (RIN 2900–AK67) published in the Proposed Rules section of this issue of the **Federal Register**.)

Consistent with the authorizing legislation, a note to the proposed rule explains that the proposed provisions are not intended to be a comprehensive insurance plan and do not cover health care unrelated to spina bifida and covered birth defects.

The statutory provisions state that the Secretary may provide health care directly or by contract or other arrangement with any health care provider. VA proposes to contract or arrange for provision of covered health care only through approved health care providers. In this regard, it is proposed that such health care providers be only those currently approved, for the services provided, by the Center for Medicare and Medicaid Services (CMS), Department of Defense (DoD) TRICARE program, Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), or Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or currently approved under a license or certificate issued by a governmental entity with jurisdiction. This appears to provide reasonable assurance that individuals providing health care for these children under this authority are qualified to do so. These provisions already apply to the regulations concerning the provision of health care for Vietnam veterans' children with spina bifida, except that they reflect a title change in the Department of Defense program; clarify that approved health care providers include those issued a license or certificate by a governmental entity with jurisdiction; and clarify the definition of *respite care* by stating that the care must be furnished by an approved health care provider.

The proposal includes a note clarifying when VA is the exclusive payer for health care provided. The note states that VA would provide payment under the proposal only for health care relating to spina bifida or covered birth defects (under the definitions of *spina bifida* and *covered birth defects* in proposed § 17.900, this includes complications or medical conditions that according to the scientific literature are associated with spina bifida or with the covered birth defects). The note also states that VA is the exclusive payer for services authorized under this proposal regardless of any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. The note further states that any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to spina bifida or covered birth defects.

It is proposed as a condition of payment that preauthorization from a benefits advisor of the VHA Health Administration Center be required, in accordance with prescribed procedures, for rental or purchase of durable medical equipment with a total rental or purchase price in excess of $300, respectively; transplantation services; mental health services; training; substance abuse treatment; dental services; and travel (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants) other than mileage at the General Services Administration rate for privately owned automobiles. This will help VA provide necessary care under its statutory authority. Except for the following changes these preauthorization provisions already apply to children with spina bifida. The proposal would remove the requirement for preauthorization related to case management, home care, and respite care. The VHA Health Administration Center's experience has found that case management, home care, and respite care are approved in the vast majority of cases and review of these services prior to their provision has not resulted in a change to the overall outcome of care or expenses. Preauthorization would continue to be required for the rental or purchase of durable medical equipment, however, it is proposed that it not be required for the rental or purchase of equipment with a total rental or purchase price of $300 or less, respectively. The VHA Health Administration Center's experience has shown that requiring preauthorization for durable medical equipment with a rental or purchase price of $300 or less is not cost-effective for the government. The proposal also reflects a change in title of VHA Health Administration Center personnel.

Under the proposal, payment to approved health care providers would be made using the methodology already established for the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) (see 38 CFR 17.270 *et seq.*). We believe this methodology based on Medicare and DoD principles would result in fair payments and allow VA to utilize a payment mechanism already in place. Use of the CHAMPVA payment methodology is currently a requirement under the regulations for spina bifida health care.

It is proposed that claims from approved health care providers be submitted to the VHA Health Administration Center for payment and that the claims contain specified information. The Center already provides claims processing services for eligible veterans' dependents under CHAMPVA and the spina bifida program. The specified information is necessary to make determinations concerning authorization for payment.

The proposal also includes time frames for submission of claims to ensure an orderly and efficient payment system. It is proposed that claims must be filed no later than one year after the date of service; or in the case of inpatient care, one year after the date of discharge; or in the case of retroactive approval for health care, 180 days following beneficiary notification of eligibility. Further, it is proposed that in response to a request for payment, VA will provide an explanation of benefits to ensure that VA determinations of payments would be understood by claimants. This already applies to spina bifida health care and is consistent with other VA health care programs for veterans' dependents.

The proposal sets forth a review and appeal process concerning determinations relating to the provision of health care or payment. A note states that the final decision of the VHA Health Administration Center Director, concerning provision of health care or payment, will inform the claimant of further appellate rights for an appeal to the Board of Veterans' Appeals. This already applies to spina bifida health care, except that the review and appeal process reflects a change in title of an organizational unit.

Consistent with the statutory scheme, we propose that payments made will constitute payment in full. Accordingly, providers will not be permitted to bill the patient for charges in excess of the VA-determined allowable amount. The proposed rule also includes a specific list of items that would be excluded from payment since we believe they were not intended to be subject to payment. This already applies to spina bifida health care.

The proposal includes provisions concerning medical records. It is proposed that copies of medical records generated outside VA that relate to activities for which VA is asked to provide payment or that VA determines are necessary to adjudicate claims under

§§ 17.900 through 17.905 must be provided to VA at no charge when requested by VA. This already applies to spina bifida health care.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), this proposed rule contains information collections in proposed 38 CFR 17.902 through 17.904. These sections concern the provision of certain health care for Vietnam veterans' children with spina bifida or children born with certain other birth defects to women Vietnam veterans. VA is proposing to revise the information collection currently approved by the Office of Management and Budget (OMB) under control number 2900–0578 to substitute the information collections in proposed 38 CFR 17.902 through 17.904 for the information collections currently approved for those sections of the regulations. Accordingly, under section 3507(d) of the Act VA has submitted a copy of this rulemaking action to OMB for its review.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collections of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1154, Washington, DC 20420; by fax to (202) 273–9289; or by e-mail to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AK88.'' All written comments to VA will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

Preauthorization—Section 17.902

Title: Preauthorization for Provision of Health Care for Certain Children of Vietnam Veterans.

Summary of collection of information: The provisions of proposed 38 CFR 17.902 would require individuals to submit to a benefits advisor of the VHA Health Administration Center a preauthorization request for health care consisting of rental or purchase of durable medical equipment with a rental or purchase price in excess of $300, respectively; mental health services; training; substance abuse treatment; dental services; transplantation services; or travel (other than mileage at the General Services Administration rate for privately owned automobiles). The preauthorization request would contain the child's name and Social Security number; the veteran's name and Social Security number; the type of service requested; the medical justification; the estimated cost; and the name, address, and telephone number of the provider.

Type of review: Revision of currently approved collection.

Description of need for information and proposed use of information: Such information would be necessary to make preauthorization determinations in accordance with proposed 38 CFR 17.902.

Description of likely respondents: Individuals seeking provision of health care to certain children of Vietnam veterans.

Estimated number of respondents: 400.

Estimated frequency of responses: Occasionally.

Estimated total annual reporting and recordkeeping burden: 200 hours.

Estimated burden per respondent: 30 minutes (2 × 15 minutes).

Payment of Claims—Section 17.903

Title: Payment of Claims for Provision of Health Care for Certain Children of Vietnam Veterans.

Summary of collection of information: The provisions of proposed 38 CFR 17.903 would require that, as a condition of payment, claims from ''approved health care providers'' for health care provided under 38 CFR 17.900 through 17.905 must include the following information, as appropriate: with respect to patient identification information: the patient's full name, Social Security number, address, and date of birth; with respect to provider identification information (inpatient and outpatient services): full name and address (such as hospital or physician), remittance address, address where services were rendered, individual provider's professional status (M.D., Ph.D., R.N., etc.), and provider tax identification number (TIN) or Social Security number; with respect to patient treatment information (longterm care or institutional services): dates of service (specific and inclusive); summary level itemization (by revenue code); dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed; principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization; all secondary diagnoses; all procedures performed; discharge status of the patient; and institution's Medicare provider number; with respect to patient treatment information for all other health care providers and ancillary outpatient services: diagnosis, procedure code for each procedure, service, or supply for each date of service, and individual billed charge for each procedure, service, or supply for each date of service; with respect to prescription drugs and medicines: name and address of pharmacy where drug was dispensed, name of drug, National Drug Code (NDC) for drug provided, strength, quantity, date dispensed, and pharmacy receipt for each drug dispensed.

Type of review: Revision of currently approved collection.

Description of need for information and proposed use of information: Such information would be necessary to make payment determinations in accordance with proposed 38 CFR 17.903.

Description of likely respondents: Individuals seeking payment for provision of health care for certain children of Vietnam veterans.

Estimated number of respondents: 3,000.

Estimated frequency of responses: 10.

Estimated total annual reporting and recordkeeping burden: 3,000 hours.

Estimated burden per respondent: 60 minutes (10 × 6 minutes).

Review and Appeal Process—Section 17.904

Title: Review and Appeal Process Regarding Provision of Health Care or Payment Relating to Provision of Health Care for Certain Children of Vietnam Veterans.

Summary of collection of information: The provisions of proposed 38 CFR 17.904 would establish a review process regarding disagreements by a Vietnam veteran's child or representative with a determination concerning authorization of health care or a health care provider's disagreement with a determination regarding payment. The person or entity requesting reconsideration of such determination would be required to submit such request to the VHA Health Administration Center (Attention: Chief, Benefit and Provider Services), in writing within one year of the date of initial determination. The request must state why the decision is in error and include any new and relevant information not previously considered. After reviewing the matter, a benefits

advisor would issue a written determination to the person or entity seeking reconsideration. If such person or entity remains dissatisfied with the determination, the person or entity would be permitted to make a written request for review by the Director, VHA Health Administration Center.

Type of review: Revision of currently approved collection.

Description of need for information and proposed use of information: The information proposed to be collected under § 17.904 appears to be necessary to make review and appeal determinations.

Description of likely respondents: Beneficiaries and providers disagreeing with determinations regarding covered services and benefits.

Estimated number of respondents: 200.

Estimated frequency of responses: 3.

Estimated total annual reporting and recordkeeping burden: 200 hours.

Estimated burden per respondent: 60 minutes (3 × 20 minutes).

The Department considers comments by the public on proposed collections of information in—

• Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

• Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

• Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of the collections of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

Comment Period

We are providing, except for comments on the information collection provisions, a comment period of 30 days for this proposed rule due to the December 1, 2001, effective date of the new benefit programs enacted by section 401 of Public Law 106–419, the statutory requirement for a final rule prior to that date, and the need to have a final rule as soon as possible in order to avoid delay in the commencement of those benefits. We are providing for the information collections in this document a 60-day comment period pursuant to the Paperwork Reduction Act.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of the rule would not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. It is estimated that there are only a total of 1200 Vietnam veterans' children who suffer from spina bifida and women Vietnam veterans' children who suffer from covered birth defects. They are widely geographically diverse and the health care provided to them would not have a significant impact on any small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this document is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance program numbers for the programs affected by this document.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: October 26, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 17 is proposed to be amended as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501(a), 1721, unless otherwise noted.

2. In part 17, the undesignated center heading immediately preceding § 17.900 and §§ 17.900 through 17.905 are revised to read as follows:

Health Care Benefits for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

§ 17.900 Definitions.

For purposes of §§ 17.900 through 17.905—

Approved health care provider means a health care provider currently approved by the Center for Medicare and Medicaid Services (CMS), Department of Defense TRICARE Program, Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Joint Commission on Accreditation of Health Care Organizations (JCAHO), or currently approved for providing health care under a license or certificate issued by a governmental entity with jurisdiction. An entity or individual will be deemed to be an approved health care provider only when acting within the scope of the approval, license, or certificate.

Child for purposes of spina bifida means the same as *individual* as defined at § 3.814(c)(2) or § 3.815(c)(2) of this title and for purposes of covered birth defects means the same as *individual* as defined at § 3.815(c)(2) of this title.

Covered birth defects means the same as defined at § 3.815(c)(3) of this title and also includes complications or medical conditions that are associated with the covered birth defects according to the scientific literature.

Habilitative and rehabilitative care means such professional, counseling, and guidance services and such treatment programs (other than vocational training under 38 U.S.C. 1804 or 1814) as are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of a disabled person.

Health care means home care, hospital care, nursing home care, outpatient care, preventive care,

habilitative and rehabilitative care, case management, and respite care; and includes the training of appropriate members of a child's family or household in the care of the child; and the provision of such pharmaceuticals, supplies (including continence-related supplies such as catheters, pads, and diapers), equipment (including durable medical equipment), devices, appliances, assistive technology, direct transportation costs to and from approved health care providers (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants), and other materials as the Secretary determines necessary.

Health care provider means any entity or individual that furnishes health care, including specialized clinics, health care plans, insurers, organizations, and institutions.

Home care means medical care, habilitative and rehabilitative care, preventive health services, and health-related services furnished to a child in the child's home or other place of residence.

Hospital care means care and treatment furnished to a child who has been admitted to a hospital as a patient.

Nursing home care means care and treatment furnished to a child who has been admitted to a nursing home as a resident.

Outpatient care means care and treatment, including preventive health services, furnished to a child other than hospital care or nursing home care.

Preventive care means care and treatment furnished to prevent disability or illness, including periodic examinations, immunizations, patient health education, and such other services as the Secretary determines necessary to provide effective and economical preventive health care.

Respite care means care furnished by an approved health care provider on an intermittent basis for a limited period to an individual who resides primarily in a private residence when such care will help the individual continue residing in such private residence.

Spina bifida means all forms and manifestations of spina bifida except spina bifida occulta (this includes complications or medical conditions that are associated with spina bifida according to the scientific literature).

Vietnam veteran for purposes of spina bifida means the same as defined at § 3.814(c)(1) or § 3.815(c)(1) of this title and for purposes of covered birth defects means the same as defined at § 3.815(c)(1) of this title.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

§ 17.901 Provision of health care.

(a) *Spina bifida.* VA will provide a Vietnam veteran's child who has been determined under § 3.814 or § 3.815 of this title to suffer from spina bifida with such health care as the Secretary determines is needed by the child for spina bifida. VA may inform spina bifida patients, parents, or guardians that health care may be available at not-for-profit charitable entities.

(b) *Covered birth defects.* VA will provide a woman Vietnam veteran's child who has been determined under § 3.815 of this title to suffer from spina bifida or other covered birth defects with such health care as the Secretary determines is needed by the child for the covered birth defects. However, if VA has determined for a particular covered birth defect that § 3.815(a)(2) of this title applies (concerning affirmative evidence of cause other than the mother's service during the Vietnam era), no benefits or assistance will be provided under this section with respect to that particular birth defect.

(c) *Providers of care.* Health care provided under this section will be provided directly by VA, by contract with an approved health care provider, or by other arrangement with an approved health care provider.

(d) *Submission of information.* For purposes of §§ 17.900 through 17.905:

(1) The telephone number of the VHA Health Administration Center is (888) 820–1756;

(2) The facsimile number of the VHA Health Administration Center is (303) 331–7807;

(3) The hand-delivery address of the VHA Health Administration Center is 300 S. Jackson Street, Denver, CO 80209; and

(4) The mailing address of the VHA Health Administration Center—

(i) For spina bifida is P.O. Box 65025, Denver, CO 80206–9025; and

(ii) For covered birth defects is P.O. Box 469027, Denver, CO 80246–9027.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

Note to § 17.901: This is not intended to be a comprehensive insurance plan and does not cover health care unrelated to spina bifida or unrelated to covered birth defects. VA is the exclusive payer for services paid under §§ 17.900 through 17.905 regardless of any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. Any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to spina bifida or covered birth defects.

§ 17.902 Preauthorization.

(a) Preauthorization from a benefits advisor of the VHA Health Administration Center is required for the following services or benefits under §§ 17.900 through 17.905: rental or purchase of durable medical equipment with a total rental or purchase price in excess of $300, respectively; transplantation services; mental health services; training; substance abuse treatment; dental services; and travel (other than mileage at the General Services Administration rate for privately owned automobiles). Authorization will only be given in those cases where there is a demonstrated medical need related to the spina bifida or covered birth defects. Requests for provision of health care requiring preauthorization shall be made to the VHA Health Administration Center and may be made by telephone, facsimile, mail, or hand delivery. The application must contain the following:

(1) Name of child,

(2) Child's Social Security number,

(3) Name of veteran,

(4) Veteran's Social Security number,

(5) Type of service requested,

(6) Medical justification,

(7) Estimated cost, and

(8) Name, address, and telephone number of provider.

(b) Notwithstanding the provisions of paragraph (a) of this section, preauthorization is not required for a condition for which failure to receive immediate treatment poses a serious threat to life or health. Such emergency care should be reported by telephone to the VHA Health Administration Center within 72 hours of the emergency.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

§ 17.903 Payment.

(a)(1) Payment for services or benefits under §§ 17.900 through 17.905 will be determined utilizing the same payment methodologies as provided for under the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) (see § 17.270).

(2) As a condition of payment, the services must have occurred:

(i) For spina bifida, on or after October 1, 1997, and must have occurred on or after the date the child was determined eligible for benefits under § 3.814 of this title.

(ii) For covered birth defects, on or after December 1, 2001, and must have occurred on or after the date the child was determined eligible for benefits under § 3.815 of this title.

(3) Claims from approved health care providers must be filed with the VHA Health Administration Center in writing

(facsimile, mail, hand delivery, or electronically) no later than:

(i) One year after the date of service; or

(ii) In the case of inpatient care, one year after the date of discharge; or

(iii) In the case of retroactive approval for health care, 180 days following beneficiary notification of eligibility.

(4) Claims for health care provided under the provisions of §§ 17.900 through 17.905 must contain, as appropriate, the information set forth in paragraphs (a)(4)(i) through (a)(4)(v) of this section.

(i) Patient identification information:

(A) Full name,

(B) Address,

(C) Date of birth, and

(D) Social Security number.

(ii) Provider identification information (inpatient and outpatient services):

(A) Full name and address (such as hospital or physician),

(B) Remittance address,

(C) Address where services were rendered,

(D) Individual provider's professional status (M.D., Ph.D., R.N., etc.), and

(E) Provider tax identification number (TIN) or Social Security number.

(iii) Patient treatment information (long-term care or institutional services):

(A) Dates of service (specific and inclusive),

(B) Summary level itemization (by revenue code),

(C) Dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed,

(D) Principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization,

(E) All secondary diagnoses,

(F) All procedures performed,

(G) Discharge status of the patient, and

(H) Institution's Medicare provider number.

(iv) Patient treatment information for all other health care providers and ancillary outpatient services such as durable medical equipment, medical requisites, and independent laboratories:

(A) Diagnosis,

(B) Procedure code for each procedure, service, or supply for each date of service, and

(C) Individual billed charge for each procedure, service, or supply for each date of service.

(v) Prescription drugs and medicines and pharmacy supplies:

(A) Name and address of pharmacy where drug was dispensed,

(B) Name of drug,

(C) National Drug Code (NDC) for drug provided,

(D) Strength,

(E) Quantity,

(F) Date dispensed,

(G) Pharmacy receipt for each drug dispensed (including billed charge), and

(H) Diagnosis for which each drug is prescribed.

(b) Health care payment will be provided in accordance with the provisions of §§ 17.900 through 17.905. However, the following are specifically excluded from payment:

(1) Care as part of a grant study or research program,

(2) Care considered experimental or investigational,

(3) Drugs not approved by the U.S. Food and Drug Administration for commercial marketing,

(4) Services, procedures, or supplies for which the beneficiary has no legal obligation to pay, such as services obtained at a health fair,

(5) Services provided outside the scope of the provider's license or certification, and

(6) Services rendered by providers suspended or sanctioned by a Federal agency.

(c) Payments made in accordance with the provisions of §§ 17.900 through 17.905 shall constitute payment in full. Accordingly, the health care provider or agent for the health care provider may not impose any additional charge for any services for which payment is made by VA.

(d) Explanation of benefits (EOB). When a claim under the provisions of §§ 17.900 through 17.905 is adjudicated, an EOB will be sent to the beneficiary or guardian and the provider. The EOB provides, at a minimum, the following information:

(1) Name and address of recipient,

(2) Description of services and/or supplies provided,

(3) Dates of services or supplies provided,

(4) Amount billed,

(5) Determined allowable amount,

(6) To whom payment, if any, was made, and

(7) Reasons for denial (if applicable).

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

§ 17.904 Review and appeal process.

For purposes of §§ 17.900 through 17.905, if a health care provider, child, or representative disagrees with a determination concerning provision of health care or with a determination concerning payment, the person or entity may request reconsideration. Such request must be submitted in writing (by facsimile, mail, or hand delivery) within one year of the date of the initial determination to the VHA Health Administration Center (Attention: Chief, Benefit and Provider Services). The request must state why it is believed that the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for dispute will be returned to the sender without further consideration. After reviewing the matter, including any relevant supporting documentation, a benefits advisor will issue a written determination (with a statement of findings and reasons) to the person or entity seeking reconsideration that affirms, reverses, or modifies the previous decision. If the person or entity seeking reconsideration is still dissatisfied, within 90 days of the date of the decision he or she may submit in writing (by facsimile, mail, or hand delivery) to the VHA Health Administration Center (Attention: Director) a request for review by the Director, VHA Health Administration Center. The Director will review the claim and any relevant supporting documentation and issue a decision in writing (with a statement of findings and reasons) that affirms, reverses, or modifies the previous decision. An appeal under this section would be considered as filed at the time it was delivered to the VA or at the time it was released for submission to the VA (for example, this could be evidenced by the postmark, if mailed).

Note to § 17.904: The final decision of the Director will inform the claimant of further appellate rights for an appeal to the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

§ 17.905 Medical records.

Copies of medical records generated outside VA that relate to activities for which VA is asked to provide payment or that VA determines are necessary to adjudicate claims under §§ 17.900 through 17.905 must be provided to VA at no cost.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AK90

Vocational Training for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to establish regulations regarding provision of vocational training and rehabilitation for women Vietnam veterans' children with covered birth defects. It would revise the current regulations regarding vocational training and rehabilitation for Vietnam veterans' children suffering from spina bifida to also encompass vocational training and rehabilitation for women Vietnam veterans' children with certain other birth defects. This is necessary to provide vocational training and rehabilitation for such children in accordance with recently enacted legislation. Companion documents entitled ''Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects'' (RIN 2900–AK67) and ''Health Care for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida'' (RIN 2900–AK88) are set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Comments must be received by VA on or before February 1, 2002, except that comments on the information collection provisions in this document must be received on or before March 4, 2002.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Room 1154, 810 Vermont Ave., NW, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK90.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). In addition, see the Paperwork Reduction Act heading under the **SUPPLEMENTARY INFORMATION** section of this preamble regarding submission of comments on the information collection provisions.

FOR FURTHER INFORMATION CONTACT: Charles A. Graffam, Consultant, Vocational Rehabilitation and Employment Service (282), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420; (202) 273–7410.

SUPPLEMENTARY INFORMATION: Prior to the enactment of Public Law 106–419 on November 1, 2000, the provisions of 38 U.S.C. chapter 18 only concerned benefits for children with spina bifida who were born to Vietnam veterans. Effective December 1, 2001, section 401 of Public Law 106–419 amends 38 U.S.C. chapter 18 to add benefits for women Vietnam veterans' children with certain birth defects (referred to below as ''covered birth defects'').

As amended, 38 U.S.C. chapter 18 provides for three separate types of benefits for women Vietnam veterans' children who suffer from covered birth defects as well as for Vietnam veterans' children who suffer from spina bifida: (1) Monthly monetary allowances for various disability levels; (2) provision of health care needed for the child's spina bifida or covered birth defects; and (3) provision of vocational training and rehabilitation.

This document proposes to amend VA's ''Vocational Rehabilitation and Education'' regulations (38 CFR part 21) by revising the regulations in part 21, subpart M (§§ 21.8010 through 21.8410) concerning the provision of vocational training and rehabilitation. These regulations currently only concern the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida. This document proposes to revise the regulations by adding women Vietnam veterans' children with covered birth defects to the existing regulatory framework. The revisions would also correct the references to § 21.222 in § 21.8210 and to § 21.8020 in § 21.8082 and make other nonsubstantive changes for purposes of clarity. These would include amending § 21.8050(c) to clarify that VA does not provide for room and board for a vocational training program under part 21, subpart M, other than for a period of 30 days or less in a special rehabilitation facility for purposes of an extended evaluation or to improve and enhance vocational potential.

As a condition of eligibility for the provision of vocational training and rehabilitation under 38 U.S.C. 1814 for women Vietnam veterans' children with covered birth defects, it is proposed that the child must be an *individual* determined to have a *covered birth defect* under 38 CFR 3.815. (Definitions of the terms *individual* and *covered birth defect* and provisions concerning identification of covered birth defects are included in proposed § 3.815 set forth in the companion document concerning monetary allowances and identification of covered birth defects (RIN 2900–AK67) published in the Proposed Rules section of this issue of the **Federal Register**.)

This proposed rule includes a definition of *eligible child* that describes a child for whom the statute authorizes VA to provide vocational training under this subpart. In the revised § 21.8282, ''Termination of a vocational training program,'' we propose to add provisions that would be applicable if VA makes a determination that a child no longer has a covered birth defect.

By statute, a child would only be eligible for one program of vocational training under 38 U.S.C. chapter 18 (even if, for example, a child has spina bifida and one or more other covered birth defects). It is proposed to reflect this in § 21.8016.

It is proposed that a woman Vietnam veteran's child with covered birth defects receive testing and evaluative services, as needed, similar to the testing and services that VA offers a veteran for the purposes of evaluation for eligibility and entitlement under a vocational rehabilitation program under 38 U.S.C. chapter 31. These testing and evaluative services are appropriate for determining whether it is reasonably feasible for the child to achieve a vocational goal and to guide the child, parent, or guardian in choosing a vocational training program for the child. This already applies to vocational training and rehabilitation for Vietnam veterans' children with spina bifida.

It is proposed that an eligible child would receive vocational training program services and assistance under provisions that, under the 38 U.S.C. chapter 31 program, already apply to vocational training program services and assistance for eligible veterans with service-connected disabilities. In this regard, it is proposed that the following provisions of 38 CFR part 21, subpart A, would apply as set forth in the text portion of this document:

- § 21.35 concerning certain definitions and explanations (see proposed § 21.8010).
- § 21.250(a) and (b)(2), concerning provision of employment services, including the definition of job development; § 21.252 concerning job development and placement services; § 21.254 concerning supportive services; § 21.256 concerning incentives for employers; and §§ 21.257 and 21.258 concerning rehabilitation through self-employment, including special assistance for persons engaged in self-employment programs (see proposed § 21.8020).

• §§ 21.50(b)(5) and 21.53(b) and (d) concerning the scope and nature of an evaluation of the reasonable feasibility of achieving a vocational goal (see proposed § 21.8032).

• §§ 21.80, 21.84, and 21.88 concerning the requirements for an individualized written plan of vocational rehabilitation and its purposes, to include employment assistance; and §§ 21.92, 21.94 (a) through (d), and 21.96 concerning preparation of, changes to, and review of an individualized written plan of vocational rehabilitation (see proposed §§ 21.8080 and 21.8082).

• §§ 21.100 and 21.380 concerning counseling (see proposed § 21.8100).

• § 21.120 concerning vocational training; §§ 21.122 through 21.132 concerning types of allowable vocational training; and § 21.146 concerning independent instructor courses (see proposed § 21.8120).

• §§ 21.290 through 21.298 concerning course approval and facility selection (except that the provisions pertaining to use of facilities offering independent living services to evaluate independent living potential (see § 21.294(b)(1)(i)) and to provide a program of independent living services to individuals for whom an Individualized Independent Living Plan (IILP) has been developed (see § 21.294(b)(1)(ii)) do not apply, and provisions concerning authorization of independent living services as an incidental part of a plan (see § 21.294(b)(1)(iii)) apply, in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program, only to the extent allowable under proposed § 21.8050 for an individualized written plan of vocational rehabilitation) (see proposed §§ 21.8120 and 21.8286).

• § 21.142(a) and (b); § 21.144; § 21.146; § 21.148(a) and (c); § 21.150, other than paragraph (b); § 21.152, other than paragraph (b); § 21.154, other than paragraph (b); and § 21.156 concerning special rehabilitative services of the following types: adult basic education, vocational course in a sheltered workshop or rehabilitation facility, independent instructor course, tutorial assistance, reader service, interpreter service for the hearing impaired, special transportation assistance, and other vocationally oriented incidental services (see proposed § 21.8140).

• §§ 21.212 through 21.224 concerning supplies (however, the following provisions do not apply to this subpart: § 21.216(a)(3) concerning special modifications, including automobile adaptive equipment; § 21.220(a)(1) concerning advancements from the 38 U.S.C. chapter 31 program revolving loan fund; and § 21.222(b)(1)(x) concerning release or repayment for independent living services program supplies) (see proposed § 21.8210).

• § 21.262 concerning reimbursement for costs of training and rehabilitation facilities, supplies, and services (see proposed § 21.8260).

• §§ 21.60 and 21.62 concerning a medical consultant and the Vocational Rehabilitation Panel and § 21.310 concerning rate of pursuit measurement (see proposed § 21.8310).

• § 21.326 concerning the commencement and termination dates of a period of employment services (see proposed § 21.8320).

• §§ 21.362 and 21.364 concerning satisfactory conduct and cooperation (see proposed § 21.8360).

• § 21.154 concerning special transportation allowance; § 21.370 (however, the words ''under § 21.282'' in § 21.370(b)(2)(iii)(B) do not apply) and § 21.372 concerning intraregional and interregional travel at government expense; and § 21.376 concerning authorization of transportation services for evaluation or counseling (see proposed § 21.8370).

• § 21.380 concerning personnel qualification standards; §§ 21.412 and 21.414 (except § 21.414(c), (d), and (e)) concerning finality and revision of decisions; § 21.420 concerning notification that VA will provide as to findings, decisions, and appeal rights; and § 21.430 concerning accountability for authorization and payment of program costs for training and rehabilitation services (see proposed § 21.8380).

As set forth in the text portion of this document, these provisions appear to be appropriate to apply to the provision of vocational training and rehabilitation for women Vietnam veterans' children with covered birth defects. The same provisions apply to the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida.

It is also proposed that VA officials will inform children who have covered birth defects about any vocational training and rehabilitation that may be available under other governmental and nongovernmental programs. This already applies to the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida.

It is proposed that VA provide case management to assist the eligible child throughout a planned vocational training program. This would help to ensure that the child achieves the maximum vocational benefit from the program. This already applies to the provision of vocational training and rehabilitation for Vietnam veterans' children with spina bifida.

Comment Period

We are providing, except for comments on the information collection provisions, a comment period of 30 days for this proposed rule due to the December 1, 2001, effective date of the new benefit programs enacted by section 401 of Public Law 106–419, the statutory requirement for a final rule prior to that date, and the need to have a final rule as soon as possible in order to avoid delay in the commencement of those benefits. We are providing for the information collections in this document a 60-day comment period pursuant to the Paperwork Reduction Act.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), collections of information are set forth in the provisions of proposed §§ 21.8014 and 21.8370. Proposed § 21.8014 would amend the provisions prescribing the information to be submitted for an application for a Vietnam veteran's child suffering from spina bifida to participate in a VA vocational training program. Proposed § 21.8370 would permit a request for reimbursement for certain transportation costs and would require submission of supporting documentation to receive reimbursement. Although provisions in the current § 21.8016 previously had been approved by the Office of Management and Budget (OMB) as an information collection under control number 2900–0581, VA is not seeking reinstatement and is requesting OMB to discontinue that approval because, as currently in effect and as proposed to be revised, § 21.8016 affects fewer than 10 respondents annually. As required under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to the OMB for its review of the collections of information in this proposed rule.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collections of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention Desk Officer for the Department of Veterans Affairs, Office of Information

and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1154, Washington, DC 20420; by fax to (202) 273–9289; or by e-mail to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK90.'' All written comments to VA will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

Title: Application for Vocational Training Benefits—Certain Children of Vietnam Veterans.

Summary of collection of information: The provisions of proposed 38 CFR 21.8014 would extend to women Vietnam veteran's children with covered birth defects the requirement that is applicable to Vietnam veterans' children with spina bifida for submitting an application for vocational training to be considered for this benefit.

Type of review: Reinstatement with change of a previously approved collection for which approval has expired (OMB control number 2900–0579).

Description of need for information and proposed use of information: VA needs to know sufficient identifying information about the applicant and the applicant's natural parent who was a Vietnam veteran to be able to relate the claim to other existing VA records. The information collected allows the Vocational Rehabilitation and Employment (VR&E) Division to review the existing records and to set up an appointment for an applicant to meet with a VR&E staff member to evaluate the claim.

Description of likely respondents: Adult children with spina bifida or other covered birth defects, parents or guardians of minor or incompetent children with spina bifida or other covered birth defects, authorized representatives, or Members of Congress.

Estimated number of respondents: 50.

Estimated frequency of responses: Once.

Estimated total annual reporting and recordkeeping burden: 12.5 reporting burden hours. The total annual reporting burden is based on each respondent taking 15 minutes to write to VA indicating a desire to take part in a vocational training program and providing the necessary identifying information. Although there is no set format for this application, the applicant must provide certain information to perfect the claim. There are no recordkeeping requirements.

Estimated average burden per respondent: 15 minutes.

Title: Request for Transportation Expense Reimbursement.

Summary of collection of information: The provisions of proposed 38 CFR 21.8370 would extend to women Vietnam veteran's children with covered birth defects the current requirement applicable to Vietnam veterans' children with spina bifida that a child receiving vocational training to request VA payment for travel expenses. VA must determine that the child would be unable to pursue training or employment or employment without this assistance. To obtain payment, the child must submit documentation showing the expenses of transportation.

Type of review: Reinstatement with change of a previously approved collection for which approval has expired (OMB control number 2900–0580).

Description of need for information and proposed use of information: A child must specifically request VA assistance with transportation expenses. This allows VA to investigate the child's situation to establish that the child would be unable to pursue training or employment without VA travel assistance. To receive payment, the child must provide supportive documentation of actual expenses incurred for the travel. This prevents VA from making payment erroneously or for fraudulently claimed travel.

Description of likely respondents: Children with spina bifida or other covered birth defects.

Estimated number of respondents: 40. Approximately half of the children who plan and enter a program will need VA financial support for their transportation expenses while in a program.

Estimated frequency of responses: Once for the initial request; monthly to obtain the travel reimbursement.

Estimated total annual reporting and recordkeeping burden: 50 reporting burden hours. Each respondent will require 15 minutes to prepare and submit the initial request ($40 \times \frac{1}{4}$ hour = 10 hours). Each respondent will then require 5 minutes to copy and submit receipts for transportation expenses to obtain reimbursement ($40 \times 12 \times \frac{1}{12}$ hour = 40 hours).

Estimated average burden per respondent: 1 hour and 15 minutes.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

Executive Order 12866

This proposed rule has been reviewed by OMB under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that the adoption of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. It is estimated that there are only 1,200 Vietnam veterans' children who suffer from spina bifida and women Vietnam veteran's children who suffer from spina bifida or other covered birth defects. They are widely dispersed geographically, and the services provided to them would not have a significant impact on any small businesses. Moreover, the institutions capable of providing appropriate services and vocational training to Vietnam veteran's children with covered birth defects or spina bifida are generally large capitalization facilities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number for benefits

affected by this rule is 64.128. There is no Catalog of Federal Domestic Assistance program number for other benefits affected by this rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflicts of interest, Defense Department, Education, Employment, Government contracts, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Personnel training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 26, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 21 is proposed to be amended as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

1. In part 21, the heading of subpart M is revised to read as follows:

Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

2. The authority citation for part 21, subpart M is revised to read as follows:

Authority: 38 U.S.C. 101, 501, 512, 1151 note, 1802, 1804–1805, 1811, 1811 note, 1812, 1814, 1816, 1821–1824, 5112, unless otherwise noted.

3. Sections 21.8010 through 21.8410 are revised to read as follows:

General

§ 21.8010 Definitions and abbreviations.

(a) *Program-specific definitions and abbreviations.* For the purposes of this subpart:

Covered birth defect means the same as defined at § 3.815(c)(3) of this title.

Eligible child means, as appropriate, either an *individual* as defined at § 3.814(c)(2) of this title who suffers from spina bifida, or an *individual* as defined at § 3.815(c)(2) of this title who has a covered birth defect other than a birth defect described in § 3.815(a)(2).

Employment assistance means employment counseling, placement and post-placement services, and personal and work adjustment training.

Institution of higher education has the same meaning that § 21.4200 provides for the term *institution of higher learning.*

Program of employment services means the services an eligible child may receive if the child's entire program consists only of employment assistance.

Program participant means an eligible child who, following an evaluation in which VA finds the child's achievement of a vocational goal is reasonably feasible, elects to participate in a vocational training program under this subpart.

Spina bifida means the same as defined at § 3.814(c)(3) of this title.

Vietnam veteran means, in the case of a child suffering from spina bifida, the same as defined at § 3.814(c)(1) or § 3.815(c)(1) of this title and, in the case of a child with a covered birth defect, the same as defined at § 3.815(c)(1) of this title.

Vocational training program means the vocationally oriented training services, and assistance, including placement and post-placement services, and personal and work-adjustment training that VA finds necessary to enable the child to prepare for and participate in vocational training or employment. A vocational training program may include a program of education offered by an institution of higher education only if the program is predominantly vocational in content.

VR&E refers to the Vocational Rehabilitation and Employment activity (usually a division) in a Veterans Benefits Administration regional office, the staff members of that activity in the regional office or in outbased locations, and the services that activity provides.

(Authority: 38 U.S.C. 101, 1802, 1804, 1811–1812, 1814, 1821)

(b) *Other terms and abbreviations.* The following terms and abbreviations have the same meaning or explanation that § 21.35 provides:

(1) CP (Counseling psychologist);

(2) Program of education;

(3) Rehabilitation facility;

(4) School, educational institution, or institution;

(5) Training establishment;

(6) Vocational goal;

(7) VRC (Vocational rehabilitation counselor);

(8) VRS (Vocational rehabilitation specialist); and

(9) Workshop.

(Authority: 38 U.S.C. 1804, 1811, 1814, 1821)

§ 21.8012 Vocational training program for certain children of Vietnam veterans—spina bifida and covered birth defects.

VA will provide an evaluation to an eligible child to determine the child's potential for achieving a vocational goal. If this evaluation establishes that it is feasible for the child to achieve a vocational goal, VA will provide the child with the vocational training, employment assistance, and other related rehabilitation services authorized by this subpart that VA finds the child needs to achieve a vocational goal, including employment.

(Authority: 38 U.S.C. 1804, 1812, 1814)

§ 21.8014 Application.

(a) *Filing an application.* To participate in a vocational training program, the child of a Vietnam veteran (or the child's parent or guardian, an authorized representative, or a Member of Congress acting on behalf of the child) must file an application. An application is a request for an evaluation of the feasibility of the child's achievement of a vocational goal and, if a CP or VRC determines that achievement of a vocational goal is feasible, for participation in a vocational training program. The application may be in any form, but it must:

(1) Be in writing over the signature of the applicant or the person applying on the child's behalf;

(2) Provide the child's full name, address, and VA claim number, if any, and the parent Vietnam veteran's full name and Social Security number or VA claim number, if any; and

(3) Clearly identify the benefit sought.

(Authority: 38 U.S.C. 1804(a), 1822, 5101)

(b) *Time for filing.* For a child claiming eligibility based on having spina bifida, an application under this subpart may be filed at any time after September 30, 1997. For a child claiming eligibility based on a covered birth defect, an application under this subpart may be filed at any time after November 30, 2001.

(Authority: 38 U.S.C. 1804, 1811, 1811 note, 1812, 1814, 1821)

§ 21.8016 Nonduplication of benefits.

(a) *Election of benefits—chapter 35.* An eligible child may not receive benefits concurrently under 38 U.S.C. chapter 35 and under this subpart. If the child is eligible for both benefits, he or she must elect in writing which benefit to receive.

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1824)

(b) *Reelections of benefits—chapter 35.* An eligible child receiving benefits under this subpart or under 38 U.S.C. chapter 35 may change his or her election at any time. A reelection between benefits under this subpart and under 38 U.S.C. chapter 35 must be prospective, however, and may not result in an eligible child receiving

benefits under both programs for the same period of training.

(Authority: 38 U.S.C. 1804(e)(1), 1814, 1824)

(c) *Length of benefits under multiple programs—chapter 35.* The aggregate period for which an eligible child may receive assistance under this subpart and under 38 U.S.C. chapter 35 together may not exceed 48 months of full-time training or the part-time equivalent.

(Authority: 38 U.S.C. 1804(e)(2), 1814)

(d) *Nonduplication of benefits under 38 U.S.C. 1804 and 1814.* An eligible child may only be provided one program of vocational training under this subpart.

(Authority: 38 U.S.C. 1804, 1814, 1824)

Basic Entitlement Requirements

§ 21.8020 Entitlement to vocational training and employment assistance.

(a) *Basic entitlement requirements.* Under this subpart, for an eligible child to receive vocational training, employment assistance, and related rehabilitation services and assistance to achieve a vocational goal (to include employment), the following requirements must be met:

(1) A CP or VRC must determine that achievement of a vocational goal by the child is reasonably feasible; and

(2) The child and VR&E staff members must work together to develop and then agree to an individualized written plan of vocational rehabilitation identifying the vocational goal and the means to achieve this goal.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Services and assistance.* An eligible child may receive the services and assistance described in § 21.8050(a). The following sections in subpart A of this part apply to the provision of these services and assistance in a manner comparable to their application for a veteran under that subpart:

(1) Section 21.250(a) and (b)(2);

(2) Section 21.252;

(3) Section 21.254;

(4) Section 21.256 (not including paragraph (e)(2));

(5) Section 21.257; and

(6) Section 21.258.

(Authority: 38 U.S.C. 1804, 1814)

(c) *Requirements to receive employment services and assistance.* VA will provide employment services and assistance under paragraph (b) of this section only if the eligible child:

(1) Has achieved a vocational objective;

(2) Has voluntarily ceased vocational training under this subpart, but the case manager finds the child has attained sufficient skills to be employable; or

(3) VA determines during evaluation that the child already has the skills necessary for suitable employment and does not need additional training, but to secure suitable employment the child does need the employment assistance that paragraph (b) of this section describes.

(Authority: 38 U.S.C. 1804, 1814)

(d) *Additional employment services and assistance.* If an eligible child has received employment assistance and obtains a suitable job, but VA later finds the child needs additional employment services and assistance, VA may provide the child with these services and assistance if, and to the extent, the child has remaining program entitlement.

(Authority: 38 U.S.C. 1804, 1814)

(e) *Program entitlement usage.* (1) *Basic entitlement period.* An eligible child will be entitled to receive 24 months of full-time training, services, and assistance (including employment assistance) or the part-time equivalent, as part of a vocational training program.

(2) *Extension of basic entitlement period.* VA may extend the basic 24-month entitlement period, not to exceed another 24 months of full-time program participation, or the part-time equivalent, if VA determines that:

(i) The extension is necessary for the child to achieve a vocational goal identified before the end of the basic 24-month entitlement period; and

(ii) The child can achieve the vocational goal within the extended period.

(3) *Principles for charging entitlement.* VA will charge entitlement usage for training, services, or assistance (but not the initial evaluation, as described in § 21.8032) furnished to an eligible child under this subpart on the same basis as VA would charge for similar training, services, or assistance furnished a veteran in a vocational rehabilitation program under 38 U.S.C. chapter 31. VA may charge entitlement at a half-time, three-quarter-time, or full-time rate based upon the child's training time using the rate-of-pursuit criteria in § 21.8310. The provisions concerning reduced work tolerance under § 21.312, and those relating to less-than-half-time training under § 21.314, do not apply under this subpart.

(Authority: 38 U.S.C. 1804, 1814)

§ 21.8022 Entry and reentry.

(a) *Date of program entry.* VA may not enter a child into a vocational training program or provide an evaluation or any training, services, or assistance under this subpart before the date VA first receives an application for a vocational training program filed in accordance with § 21.8014.

(Authority: 38 U.S.C. 1151 note, 1804, 1811, 1811 note, 1812, 1814)

(b) *Reentry.* If an eligible child interrupts or ends pursuit of a vocational training program and VA subsequently allows the child to reenter the program, the date of reentrance will accord with the facts, but may not precede the date VA receives an application for the reentrance.

(Authority: 38 U.S.C. 1804, 1814, 1822)

Evaluation

§ 21.8030 Requirement for evaluation of child.

(a) *Children to be evaluated.* The VR&E Division will evaluate each child who:

(1) Applies for a vocational training program; and

(2) Has been determined to be an eligible child as defined in § 21.8010.

(Authority: 38 U.S.C. 1804(a), 1814)

(b) *Purpose of evaluation.* The evaluation has two purposes:

(1) To ascertain whether achievement of a vocational goal by the child is reasonably feasible; and

(2) If a vocational goal is reasonably feasible, to develop an individualized plan of integrated training, services, and assistance that the child needs to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804, 1814)

§ 21.8032 Evaluations.

(a) *Scope and nature of evaluation.* The scope and nature of the evaluation under this program will be comparable to an evaluation of the reasonable feasibility of achieving a vocational goal for a veteran under 38 U.S.C. chapter 31 and §§ 21.50(b)(5) and 21.53(b) and (d).

(Authority: 38 U.S.C. 1804(a), 1814)

(b) *Specific services to determine the reasonable feasibility of achieving a vocational goal.* As a part of the evaluation of reasonable feasibility of achieving a vocational goal, VA may provide the following specific services, as appropriate:

(1) Assessment of feasibility by a CP or VRC;

(2) Review of feasibility assessment and of need for special services by the Vocational Rehabilitation Panel;

(3) Provision of medical, testing, and other diagnostic services to ascertain the child's capacity for training and employment; and

(4) Evaluation of employability by professional staff of an educational or

rehabilitation facility, for a period not to exceed 30 days.

(Authority: 38 U.S.C. 1804(a), 1814)

(c) *Responsibility for evaluation.* A CP or VRC will make all determinations as to the reasonable feasibility of achieving a vocational goal.

(Authority: 38 U.S.C. 1804(a), (b), 1814)

Services and Assistance to Program Participants

§ 21.8050 Scope of training, services, and assistance.

(a) *Allowable training, services, and assistance.* VA may provide to vocational training program participants:

(1) Vocationally oriented training, services, and assistance, to include:

(i) Training in an institution of higher education if the program is predominantly vocational; and

(ii) Tuition, fees, books, equipment, supplies, and handling charges.

(2) Employment assistance including:

(i) Vocational, psychological, employment, and personal adjustment counseling;

(ii) Services to place the individual in suitable employment and post-placement services necessary to ensure satisfactory adjustment in employment; and

(iii) Personal adjustment and work adjustment training.

(3) Vocationally oriented independent living services only to the extent that the services are indispensable to the achievement of the vocational goal and do not constitute a significant portion of the services to be provided.

(4) Other vocationally oriented services and assistance of the kind VA provides veterans under the 38 U.S.C. chapter 31 program, except as paragraph (c) of this section provides, that VA determines the program participant needs to prepare for and take part in vocational training or in employment.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Vocational training program.* VA will provide either directly or by contract, agreement, or arrangement with another entity, and at no cost to the beneficiary, the vocationally oriented training, other services, and assistance that VA approves for the individual child's program under this subpart. Authorization and payment for approved services will be made in a comparable manner to that VA provides for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Prohibited services and assistance.* VA may not provide to a vocational training program participant any:

(1) Loan;

(2) Subsistence allowance;

(3) Automobile adaptive equipment;

(4) Training at an institution of higher education in a program of education that is not predominantly vocational in content;

(5) Employment adjustment allowance;

(6) Room and board (other than for a period of 30 days or less in a special rehabilitation facility either for purposes of an extended evaluation or to improve and enhance vocational potential);

(7) Independent living services, except those that are incidental to the pursuit of the vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

Duration of Vocational Training

§ 21.8070 Basic duration of a vocational training program.

(a) *Basic duration of a vocational training program.* The duration of a vocational training program, as paragraphs (e)(1) and (e)(2) of § 21.8020 provide, may not exceed 24 months of full-time training, services, and assistance or the part-time equivalent, except as § 21.8072 allows.

(Authority: 38 U.S.C. 1804(d), 1814)

(b) *Responsibility for estimating the duration of a vocational training program.* While preparing the individualized written plan of vocational rehabilitation, the CP or VRC will estimate the time the child needs to complete a vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Duration and scope of training must meet general requirements for entry into the selected occupation.* The child will receive training, services, and assistance, as § 21.8120 describes, for a period that VA determines the child needs to reach the level employers generally recognize as necessary for entry into employment in a suitable occupational objective.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Approval of training beyond the entry level.* To qualify for employment in a particular occupation, the child may need training that exceeds the amount a person generally needs for employment in that occupation. VA will provide the necessary additional training under one or more of the following conditions:

(1) Training requirements for employment in the child's vocational goal in the area where the child lives or will seek employment exceed those job seekers generally need for that type of employment;

(2) The child is preparing for a type of employment in which he or she will be at a definite disadvantage in competing with nondisabled persons and the additional training will offset the competitive disadvantage;

(3) The choice of a feasible occupation is limited, and additional training will enhance the child's employability in one of the feasible occupations; or

(4) The number of employment opportunities within a feasible occupation is restricted.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Estimating the duration of the training period.* In estimating the length of the training period the eligible child needs, the CP or VRC must determine that:

(1) The proposed vocational training would not normally require a person without a disability more than 24 months of full-time pursuit, or the part-time equivalent, for successful completion; and

(2) The program of training and other services the child needs, based upon VA's evaluation, will not exceed 24 months or the part-time equivalent. In calculating the proposed program's length, the CP or VRC will follow the procedures in § 21.8074(a).

(Authority: 38 U.S.C. 1804(d), 1814)

(f) *Required selection of an appropriate vocational goal.* If the total period the child would require for completion of an initial vocational training program in paragraph (e) of this section is more than 24 months, or the part-time equivalent, the CP or VRC must work with the child to select another suitable initial vocational goal.

(Authority: 38 U.S.C. 1804(d)(2), 1814)

§ 21.8072 Authorizing training, services, and assistance beyond the initial individualized written plan of vocational rehabilitation.

(a) *Extension of the duration of a vocational training program.* VA may authorize an extension of a vocational training program when necessary to provide additional training, services, and assistance to enable the child to achieve the vocational or employment goal identified before the end of the child's basic entitlement period, as stated in the individualized written plan of vocational rehabilitation under § 21.8080. A change from one occupational objective to another in the same field or occupational family meets the criterion for prior identification in the individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(d)(2), (e)(2), 1814)

(b) *Extensions for prior participants in the program.* (1) Except as paragraph (b)(2) of this section provides, VA may authorize additional training, limited to the use of remaining program entitlement including any allowable extension, for an eligible child who previously participated in vocational training under this subpart. The additional training must:

(i) Be designed to enable the child to complete the prior vocational goal or a different vocational goal; and

(ii) Meet the same provisions as apply to training for new participants.

(2) An eligible child who has previously achieved a vocational goal in a vocational training program under this subpart may not receive additional training under paragraph (b)(1) of this section unless a CP or VRC sets aside the child's achievement of that vocational goal under § 21.8284.

(Authority: 38 U.S.C. 1804(b) through (e), 1814)

(c) *Responsibility for authorizing a program extension.* A CP or VRC may approve extensions of the vocational training program the child is pursuing up to the maximum program limit of 48 months if the CP or VRC determines that the child needs the additional time to successfully complete training and obtain employment, and the following conditions are met:

(1) The child has completed more than half of the planned training; and

(2) The child is making satisfactory progress.

(Authority: 38 U.S.C. 1804(d)(2), 1814)

§ 21.8074 Computing the period for vocational training program participation.

(a) *Computing the participation period.* To compute the number of months and days of an eligible child's participation in a vocational training program:

(1) Count the number of actual months and days of the child's:

(i) Pursuit of vocational education or training;

(ii) Receipt of extended evaluation-type services and training, or services and training to enable the child to prepare for vocational training or employment, if a veteran in a 38 U.S.C. chapter 31 program would have received a subsistence allowance while receiving the same type of services and training; and

(iii) Receipt of employment and post-employment services (any period of employment or post-employment services is considered full-time program pursuit).

(2) Do not count:

(i) The initial evaluation period;

(ii) Any period before the child enters a vocational training program under this subpart;

(iii) Days of authorized leave; and

(iv) Other periods during which the child does not pursue training, such as periods between terms.

(3) Convert part-time training periods to full-time equivalents.

(4) Total the months and days under paragraphs (a)(1) and (a)(3) of this section. This sum is the period of the child's participation in the program.

(Authority: 38 U.S.C. 1804(d), 1814)

(b) *Consistency with principles for charging entitlement.* Computation of the program participation period under this section will be consistent with the principles for charging entitlement under § 21.8020.

(Authority: 38 U.S.C. 1804(d), 1814)

Individualized Written Plan of Vocational Rehabilitation

§ 21.8080 Requirement for an individualized written plan of vocational rehabilitation.

(a) *General.* A CP or VRC will work in consultation with each child for whom a vocational goal is feasible to develop an individualized written plan of vocational rehabilitation services and assistance to meet the child's vocational training needs. The CP or VRC will develop this individualized written plan of vocational rehabilitation in a manner comparable to the rules governing the development of an individualized written rehabilitation plan (IWRP) for a veteran for 38 U.S.C. chapter 31 purposes, as §§ 21.80, 21.84, 21.88, 21.90, 21.92, 21.94 (a) through (d), and 21.96 provide.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Selecting the type of training to include in the individualized written plan of vocational rehabilitation.* If training is necessary, the CP or VRC will explore a range of possibilities, to include paid and unpaid on-job training, institutional training, and a combination of on-job and institutional training to accomplish the goals of the program. Generally, an eligible child's program should include on-job training, or a combination of on-job and institutional training, when this training:

(1) Is available;

(2) Is as suitable as using only institutional training for accomplishing the goals of the program; and

(3) Will meet the child's vocational training program needs.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

§ 21.8082 Inability of child to complete individualized written plan of vocational rehabilitation or achieve vocational goal.

(a) *Inability to timely complete an individualized written plan of vocational rehabilitation or achieve identified goal.* After a vocational training program has begun, the VR&E case manager may determine that the eligible child cannot complete the vocational training program described in the child's individualized written plan of vocational rehabilitation within the time limits of the individualized written plan of vocational rehabilitation or cannot achieve the child's identified vocational goal. Subject to paragraph (b) of this section, VR&E may assist the child in revising or selecting a new individualized written plan of vocational rehabilitation or goal.

(b) *Allowable changes in the individualized written plan of vocational rehabilitation or goal.* Any change in the eligible child's individualized written plan of vocational rehabilitation or vocational goal is subject to the child's continuing eligibility under the vocational training program and the provisions governing duration of a vocational training program in §§ 21.8020(e) and 21.8070 through 21.8074.

(Authority: 38 U.S.C. 1804(d), 1804(e), 1814)

(c) *Change in the individualized written plan of vocational rehabilitation or vocational goal.* (1) The individualized written plan of vocational rehabilitation or vocational goal may be changed under the same conditions as provided for a veteran under § 21.94 (a) through (d), and subject to § 21.8070 (d) through (f), if:

(i) The CP or VRC determines that achievement of a vocational goal is still reasonably feasible and that the new individualized written plan of vocational rehabilitation or goal is necessary to enable the eligible child to prepare for and participate in vocational training or employment; and

(ii) Reentrance is authorized under § 21.8284 in a case when the child has completed a vocational training program under this subpart.

(2) A CP or VRC may approve a change of vocational goal from one field or occupational family to another field or occupational family if the child can achieve the new goal:

(i) Before the end of the basic 24-month entitlement period that § 21.8020(e)(1) describes; or

(ii) Before the end of any allowable extension under §§ 21.8020(e)(2) and 21.8072 if the new vocational goal in

another field or occupational family was identified during the basic 24-month entitlement period.

(3) A change from one occupational objective to another in the same field or occupational family does not change the planned vocational goal.

(4) The child must have sufficient remaining entitlement to pursue the new individualized written plan of vocational rehabilitation or goal, as § 21.8020 provides.

(Authority: 38 U.S.C. 1804(d), 1814)

(d) *Assistance if child terminates planned program before completion.* If the eligible child elects to terminate the planned vocational training program, he or she will receive the assistance that § 21.80(d) provides in identifying other resources through which to secure the desired training or employment.

(Authority: 38 U.S.C. 1804(c), 1814)

Counseling

§ 21.8100 Counseling.

An eligible child requesting or receiving services and assistance under this subpart will receive professional counseling by VR&E and other qualified VA staff members, and by contract counseling providers, as necessary, in a manner comparable to VA's provision of these services to veterans under the 38 U.S.C. chapter 31 program, as §§ 21.100 and 21.380 provide.

(Authority: 38 U.S.C. 1803(c)(8), 1804(c), 1814)

Vocational Training, Services, and Assistance

§ 21.8120 Vocational training, services, and assistance.

(a) *Purposes.* An eligible child may receive training, services, and assistance to enable the child to prepare for and participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

(b) *Training permitted.* VA and the child will select vocationally oriented courses of study and training, completion of which usually results in a diploma, certificate, degree, qualification for licensure, or direct placement in employment. The educational and training services to be provided include:

(1) Remedial, deficiency, and refresher training; and

(2) Training that leads to an identifiable vocational goal. Under this program, VA may authorize all forms of programs that §§ 21.122 through 21.132 describe. This includes education and training programs in institutions of higher education. VA may authorize the education and training at an undergraduate or graduate degree level, only if the degree program is predominantly vocational in nature. For an eligible child to participate in a graduate degree program, the graduate degree must be a requirement for entry into the child's vocational goal. For example, a master's degree is required to engage in social work. The program of training is predominantly vocational in content if the majority of the instruction provides the technical skills and knowledge employers generally regard as specific to, and required for, entry into the child's vocational goal.

(c) *Cost of education and training services.* The CP or VRC will consider the cost of training in selecting a facility when:

(1) There is more than one facility in the area in which the child resides that:

(i) Meets the requirements for approval under §§ 21.290 through 21.298 (except as provided by § 21.8286(b)),

(ii) Can provide the training, services and other supportive assistance the child's individualized written plan of vocational rehabilitation specifies, and

(iii) Is within reasonable commuting distance; or

(2) The child wishes to train at a suitable facility in another area, even though a suitable facility in the area where the child lives can provide the training. In considering the costs of providing training in this case, VA will use the provisions of § 21.120 (except 21.120(a)(3)), § 21.370 (however, the words ''under § 21.282'' in § 21.370(b)(2)(iii)(B) do not apply), and § 21.372 in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

(d) *Accessible courses not locally available.* If suitable vocational training courses are not available in the area in which the child lives, or if they are available but not accessible to the child, VA may make other arrangements. These arrangements may include, but are not limited to:

(1) Transportation of the child, but not the child's family, personal effects, or household belongings, to another area where necessary services are available; or

(2) Use of an individual instructor to provide necessary training in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program, as § 21.146 describes.

(Authority: 38 U.S.C. 1804(b), (c), 1814)

Evaluation and Improvement of Vocational Potential

§ 21.8140 Evaluation and improvement of vocational potential.

(a) *General.* A CP or VRC may use the services that paragraph (d) of this section describes to:

(1) Evaluate vocational training and employment potential;

(2) Provide a basis for planning:

(i) A program of services and assistance to improve the eligible child's preparation for vocational training and employment; or

(ii) A vocational training program;

(3) Reevaluate the vocational training feasibility of an eligible child participating in a vocational training program; and

(4) Remediate deficiencies in the child's basic capabilities, skills, or knowledge to give the child the ability to participate in vocational training or employment.

(Authority: 38 U.S.C. 1804(b), 1814)

(b) *Periods when evaluation and improvement services may be provided.* A CP or VRC may authorize the services described in paragraph (d) of this section, except those in paragraph (d)(4) of this section, for delivery during:

(1) An initial or extended evaluation; or

(2) Pursuit of a vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Duration of services.* The duration of services needed to improve vocational training and employment potential, furnished on a full-time basis either as a preliminary part or all of a vocational training program, may not exceed 9 months. If VA furnishes these services on a less than full-time basis, the duration will be for the period necessary, but may not exceed the equivalent of 9 months of full-time training.

(Authority: 38 U.S.C. 1804(c), 1814)

(d)*Scope of services.* Evaluation and improvement services include:

(1) Diagnostic services;

(2) Personal and work adjustment training;

(3) Referral for medical care and treatment for the spina bifida, covered birth defects, or related conditions;

(4) Vocationally oriented independent living services indispensable to pursuing a vocational training program;

(5) Language training, speech and voice correction, training in ambulation, and one-hand typewriting;

(6) Orientation, adjustment, mobility and related services; and

(7) Other appropriate services to assist the child in functioning in the proposed training or work environment.
(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Applicability of chapter 31 rules on special rehabilitation services.* The provisions of § 21.140 do not apply to this subpart. Subject to the provisions of this subpart, the following provisions apply to the vocational training program under this subpart in a manner comparable to that for veterans under the 38 U.S.C. chapter 31 program: § 21.142(a) and (b); § 21.144; § 21.146; § 21.148(a) and (c); § 21.150 other than paragraph (b); § 21.152 other than paragraph (b); § 21.154 other than paragraph (b); and § 21.156.

(Authority: 38 U.S.C. 1804(c), 1814)

Supplies

§ 21.8210 Supplies.

(a) *Purpose of furnishing supplies.* VA will provide the child with the supplies that the child needs to pursue training, to obtain and maintain employment, and otherwise to achieve the goal of his or her vocational training program.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Types of supplies.* VA may provide books, tools, and other supplies and equipment that VA determines are necessary for the child's vocational training program and are required by similarly circumstanced veterans pursuing such training under 38 U.S.C. chapter 31.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Periods during which VA may furnish supplies.* VA may provide supplies to an eligible child receiving:
(1) An initial or extended evaluation;
(2) Vocational training, services, and assistance to reach the point of employability; or
(3) Employment services.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Other rules.* The provisions of §§ 21.212 through 21.224 apply to children pursuing a vocational training program under this subpart in a comparable manner as VA provides supplies to veterans under 38 U.S.C. chapter 31, except the following portions:
(1) Section 21.216(a)(3) pertaining to special modifications, including automobile adaptive equipment;
(2) Section 21.220(a)(1) pertaining to advancements from the revolving fund loan;
(3) Section 21.222(b)(1)(x) pertaining to discontinuance from an independent living services program.

(Authority: 38 U.S.C. 1804(c), 1814)

Program Costs

§ 21.8260 Training, services, and assistance costs.

The provisions of § 21.262 pertaining to reimbursement for training and other program costs apply, in a comparable manner as provided under the 38 U.S.C. chapter 31 program for veterans, to payments to facilities, vendors, and other providers for training, supplies, and other services they deliver under this subpart.

(Authority: 38 U.S.C. 1804(c), 1814)

Vocational Training Program Entrance, Termination, and Resources

§ 21.8280 Effective date of induction into a vocational training program.

Subject to the limitations in § 21.8022, the date an eligible child is inducted into a vocational training program will be the date the child first begins to receive training, services, or assistance under an individualized written plan of vocational rehabilitation.

(Authority: 38 U.S.C. 1804(c), (d), 1814)

§ 21.8282 Termination of a vocational training program.

A case manager may terminate a vocational training program under this subpart for cause, including lack of cooperation, failure to pursue the individualized written plan of vocational rehabilitation, fraud, administrative error, or finding that the child no longer has a covered birth defect. An eligible child for whom a vocational goal is reasonably feasible remains eligible for the program subject to the rules of this subpart unless the child's eligibility for or entitlement to a vocational training program under this subpart resulted from fraud or administrative error or unless VA finds the child no longer has a covered birth defect. The effective date of termination will be the earliest of the following applicable dates:
(a) *Fraud.* If an eligible child establishes eligibility for or entitlement to benefits under this subpart through fraud, VA will terminate the award of vocational training and rehabilitation as of the date VA first began to pay benefits.
(b) *Administrative error.* If an eligible child who is not entitled to benefits under this subpart receives those benefits through VA administrative error, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or other term of training unless VA has already obligated payment for the training.
(c) *Change in status as an eligible child with a covered birth defect.* If VA finds that a child no longer has a covered birth defect, VA will terminate the award of benefits effective the last day of the month in which such determination becomes final.
(d) *Lack of cooperation or failure to pursue individualized written plan of vocational rehabilitation.* If reasonable VR&E efforts to motivate an eligible child do not resolve a lack of cooperation or failure to pursue an individualized written plan of vocational rehabilitation, VA will terminate the award of benefits as of the first day of the calendar month beginning at least 60 days after notifying the child of the proposed termination. This 60-day period may not result in the entrance of the child into a new quarter, semester, or other term of training. VA will deobligate payment for training in the new quarter, semester, or other term of training.

(Authority: 38 U.S.C. 1804, 1814)

§ 21.8284 Additional vocational training.

VA may provide an additional period of training or services under a vocational training program to an eligible child who has completed training for a vocational goal and/or been suitably employed under this subpart, if the child is otherwise eligible and has remaining program entitlement as provided in § 21.8072(b), only under one of the following conditions:
(a) Current facts, including any relevant medical findings, establish that the child's disability has worsened to the extent that he or she can no longer perform the duties of the occupation which was the child's vocational goal under this subpart;
(b) The occupation that was the child's vocational goal under this subpart is now unsuitable;
(c) The vocational training program services and assistance the child originally received are now inadequate to make the child employable in the occupation which he or she sought to achieve;
(d) Experience has demonstrated that VA should not reasonably have expected employment in the objective or field for which the child received vocational training program services and assistance; or
(e) Technological change that occurred after the child achieved a vocational goal under this subpart now prevents the child from:
(1) Performing the duties of the occupation for which VA provided

training, services, or assistance, or in a related occupation; or

(2) Securing employment in the occupation for which VA provided training, services, or assistance, or in a related occupation.

(Authority: 38 U.S.C. 1804(c), 1814)

§ 21.8286 Training resources.

(a) *Applicable 38 U.S.C. chapter 31 resource provisions.* The provisions of § 21.146 and §§ 21.290 through 21.298 apply to children pursuing a vocational training program under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program, except as paragraph (b) of this section specifies.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Limitations.* The provisions of § 21.294(b)(1)(i) and (b)(1)(ii) pertaining to independent living services do not apply to this subpart. The provisions of § 21.294(b)(1)(iii) pertaining to authorization of independent living services as a part of an individualized written plan of vocational rehabilitation apply to children under this subpart in a comparable manner as for veterans under the 38 U.S.C. chapter 31 program only to the extent § 21.8050 allows.

(Authority: 38 U.S.C. 1804(c), 1814)

Rate of Pursuit

§ 21.8310 Rate of pursuit.

(a) *General requirements.* VA will approve an eligible child's pursuit of a vocational training program at a rate consistent with his or her ability to successfully pursue training, considering:

(1) Effects of his or her disability;

(2) Family responsibilities;

(3) Travel;

(4) Reasonable adjustment to training; and

(5) Other circumstances affecting the child's ability to pursue training.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Continuous pursuit.* An eligible child should pursue a program of vocational training with as little interruption as necessary, considering the factors in paragraph (a) of this section.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Responsibility for determining the rate of pursuit.* VR&E staff members will consult with the child when determining the rate and continuity of pursuit of a vocational training program. These staff members will also confer with the medical consultant and the Vocational Rehabilitation Panel described in §§ 21.60 and 21.62, as necessary. This rate and continuity of pursuit determination will occur during development of the individualized written plan of vocational rehabilitation, but may change later, as necessary to enable the child to complete training.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Measurement of training time used.* VA will measure the rate of pursuit in a comparable manner to rate of pursuit measurement under § 21.310 for veterans under the 38 U.S.C. chapter 31 program.

(Authority: 38 U.S.C. 1804(c), 1814)

Authorization of Services

§ 21.8320 Authorization of services.

The provisions of § 21.326, pertaining to the commencement and termination dates of a period of employment services, apply to children under this subpart in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program. References in that section to an individualized employment assistance plan or IEAP are considered as referring to the child's individualized written plan of vocational rehabilitation under this subpart.

(Authority: 38 U.S.C. 1804(c), 1814)

Leaves of Absence

§ 21.8340 Leaves of absence.

(a) *Purpose of leave of absence.* The purpose of the leave system is to enable the child to maintain his or her status as an active program participant.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Basis for leave of absence.* The VR&E case manager may grant the child leaves of absence for periods during which the child fails to pursue a vocational training program. For prolonged periods of absence, the VR&E case manager may approve leaves of absence only if the case manager determines the child is unable to pursue a vocational training program through no fault of the child.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Effect on entitlement.* During a leave of absence, the running of the basic 24-month period of entitlement, plus any extensions thereto, shall be suspended until the child resumes the program.

(Authority: 38 U.S.C. 1804(c), 1814)

Satisfactory Conduct and Cooperation

§ 21.8360 Satisfactory conduct and cooperation.

The provisions for satisfactory conduct and cooperation in §§ 21.362 and 21.364, except as otherwise provided in this section, apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. If an eligible child fails to meet these requirements for satisfactory conduct or cooperation, the VR&E case manager will terminate the child's vocational training program. VA will not grant an eligible child reentrance to a vocational training program unless the reasons for unsatisfactory conduct or cooperation have been removed.

(Authority: 38 U.S.C. 1804(c), 1814)

Transportation Services

§ 21.8370 Authorization of transportation services.

(a) *General.* VA will authorize transportation services necessary for an eligible child to pursue a vocational training program. The sections in subpart A of this part that are referred to in this paragraph apply to children under this subpart in a manner comparable to the way they apply to veterans under the 38 U.S.C. chapter 31 program. Transportation services include:

(1) Transportation for evaluation or counseling under § 21.376;

(2) Intraregional travel under § 21.370 (except that assurance that the child meets all basic requirements for induction into training will be determined without regard to the provisions of § 21.282) and interregional travel under § 21.372;

(3) Special transportation allowance under § 21.154; and

(4) Commuting to and from training and while seeking employment, subject to paragraphs (c) and (d) of this section.

(Authority: 38 U.S.C. 1804(c), 1814)

(b) *Reimbursement.* For transportation services that VA authorizes, VA will normally pay in arrears and in the same manner as tuition, fees, and other services under this program.

(Authority: 38 U.S.C. 1804(c), 1814)

(c) *Payment for commuting expenses for training and seeking employment.* VA may pay for transportation during the period of vocational training and the first 3 months the child receives employment services. VA may reimburse the child's costs, not to exceed $200 per month, of commuting to and from training and seeking employment if he or she requests this assistance and VA determines, after careful examination of the child's situation and subject to the limitations in paragraph (d) of this section, that the child would be unable to pursue training or employment without this assistance. VA may:

(1) Reimburse the facility at which the child is training if the facility provided transportation or related services; or

(2) Reimburse the child for his or her actual commuting expense if the child paid for the transportation.

(Authority: 38 U.S.C. 1804(c), 1814)

(d) *Limitations.* Payment of commuting expenses under paragraph (a)(4) of this section may not be made for any period when the child:

(1) Is gainfully employed;

(2) Is eligible for, and entitled to, payment of commuting costs through other VA and non-VA programs; or

(3) Can commute to school with family, friends, or fellow students.

(Authority: 38 U.S.C. 1804(c), 1814)

(e) *Documentation.* VA must receive supportive documentation with each request for reimbursement. The individualized written plan of vocational rehabilitation will specify whether VA will pay monthly or at a longer interval.

(Authority: 38 U.S.C. 1804(c), 1814)

(f) *Nonduplication.* An eligible child eligible for reimbursement of transportation services both under this section and under § 21.154 will receive only the benefit under § 21.154.

(Authority: 38 U.S.C. 1804(c), 1814)

Additional Applicable Regulations

§ 21.8380 Additional applicable regulations.

The following regulations are applicable to children in this program in a manner comparable to that provided for veterans under the 38 U.S.C. chapter 31 program: §§ 21.380, 21.412, 21.414 (except paragraphs (c), (d), and (e)), 21.420, and 21.430.

(Authority: 38 U.S.C. 1804, 1814, 5112)

Delegation of Authority

§ 21.8410 Delegation of authority.

The Secretary delegates authority for making findings and decisions under 38 U.S.C. 1804 and 1814 and the applicable regulations, precedents, and instructions for the program under this subpart to the Under Secretary for Benefits and to VR&E supervisory or non-supervisory staff members.

(Authority: 38 U.S.C. 512(a), 1804, 1814)

[FR Doc. 01–31675 Filed 12–31–01; 8:45 am]

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Federal Register

Wednesday,
January 2, 2002

Part V

Securities and Exchange Commission

17 CFR Part 230
Options Disclosure Document; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–8049; File No. S7–19–98]

RIN 3235–AH31

Options Disclosure Document

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting a revision to a rule under the Securities Act of 1933 to clarify that an options disclosure document prepared in accordance with our rules under the Securities Exchange Act of 1934 is not a prospectus and is not subject to civil liability under Section 12(a)(2) of the Securities Act. This amendment codifies a long-standing interpretive position taken by the Division of Corporation Finance soon after we adopted the current registration and disclosure system applicable to standardized options in 1982. We are codifying this position to reduce the legal uncertainty regarding the liability issue.

EFFECTIVE DATE: February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ray Be, Special Counsel, at (202) 942–2910, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION: We are adopting a revision to Rule 135b [1] under the Securities Act of 1933.[2]

I. Background

In 1998, we issued a release proposing an amendment to Rule 135b under the Securities Act to clarify that an options disclosure document prepared in accordance with Rule 9b–1 under the Securities Exchange Act of 1934 is not a prospectus and, accordingly, is not subject to civil liability under Section 12(a)(2) of the Securities Act.[3]

This clarification is consistent with the original intent of the simplified registration and disclosure system for standardized options that we adopted in 1982.[4] Under this system, the issuer of the standardized options, generally a clearing corporation, may register the options under the Securities Act on Form S–20.[5] This form is quite streamlined. The Form S–20 prospectus includes limited information about the clearing corporation issuer and the options being registered.[6] The registration statement includes additional information about the issuer's directors and executive officers and legal proceedings as well as its financial statements.

Investors are informed about the general characteristics of standardized options and the rules of options trading through a separate disclosure document we refer to as the ''options disclosure document'' or the ''ODD.'' The ODD must meet the informational requirements of Rule 9b–1 under the Exchange Act. In addition to setting forth what information must be disclosed in the ODD, Rule 9b–1 requires brokers and dealers to furnish a copy of the ODD to a customer before or at the time they approve that customer's account or accept the customer's order to trade options covered by the ODD. The exchanges on which the registered options trade work closely with the clearing corporation to prepare and update the ODD.[7]

We adopted the simplified registration and disclosure system applicable to standardized options primarily to reduce the expense of preparing and updating a detailed prospectus, and to provide investors with a document that is easier to read and understand than a traditional options prospectus.[8] Securities Act Rule 135b and its adopting release provide that an ODD prepared in accordance with Rule 9b–1 under the Exchange Act ''shall not be deemed to constitute an offer to sell or offer to buy any security'' for purposes only of Section 5 of the Securities Act.[9] In that adopting release, we stated that ''[f]or purposes of clarification, it should be noted that if the disclosure document is deemed not to be an offer to sell or buy, it cannot be deemed to be a prospectus.'' [10] In addition, we stated that Rule 135b ''is intended to relieve the preparers of the disclosure document from liability under Section 12(1) [now Section 12(a)(1)] of the [Securities] Act for distributing a disclosure document to investors which might, absent such relief, violate Section 5 of the [Securities] Act.'' [11]

However, Rule 135b and its adopting release both are silent as to whether the ODD is subject to liability under Section 12(a)(2) of the Securities Act. Section 12(a)(2) generally imposes civil liability on a person using a prospectus that contains material misstatements or omissions to offer or sell a security.[12]

Shortly after we adopted Rule 135b, the Options Clearing Corporation, commonly known as the OCC, requested interpretive advice from the Division of Corporation Finance regarding the applicability of Section 12(a)(2) liability to an ODD. After considering the rule's adopting release, the Division advised the OCC that in its view, an ODD ''is not a prospectus within the meaning of Section 2(10) [now Section 2(a)(10)] of the Securities Act and, thus, is not subject to liability under Section 12(2) [now Section 12(a)(2)] of the Securities Act.'' [13] In 1998, we proposed and sought comment on a revision to Rule 135b to clarify that the ODD is not subject to Section 12(a)(2) liability.[14]

II. Discussion

Despite this long-standing interpretive position, some uncertainty continues to exist about the applicability of Section

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[1] 17 CFR 230.135b.

[2] 15 U.S.C. 77a *et seq*.

[3] Release No. 33–7550 (July 1, 1998) [63 FR 36136].

[4] Release No. 33–6426 (Sept. 16, 1982) [47 FR 41950]. Rule 9b–1(a)(4) [17 CFR 240.9b–1(a)(4)] under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq*.] defines standardized options as ''options contracts trading on a national securities exchange, an automated quotations system of a registered securities association, or a foreign securities exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.''

[5] 17 CFR 239.20.

[6] Rule 153b [17 CFR 230.153b] allows the issuer to satisfy its Securities Act Section 5(b)(2) [15 U.S.C. 77e(b)(2)] prospectus delivery requirement by delivering copies of the prospectus to each exchange on which the options are traded. The exchange then must deliver the prospectus to options customers upon request.

[7] See Release No. 34–43461 (Oct. 19, 2000) [65 FR 64137].

[8] Release No. 33–6426, see note 3 above; see also Release No. 33–6494, n.2 (Oct. 27, 1983) [48 FR 51328] (discussing the Commission's 1979 Special Study of the Options Market, recommending the simplified registration and disclosure scheme).

[9] 15 U.S.C. 77e. However, as stated in the release proposing Rule 135b, the ODD is subject to liability under the antifraud provisions of the federal securities laws. See Release No. 33–6411 (June 24, 1982) [47 FR 28688].

[10] Release No. 33–6426, see note 3 above.

[11] Release No. 33–6426, see note 3 above. Because Rule 135b states that Section 5 does not apply to distribution of the ODD, it is clear that Section 12(a)(1) liability is inapplicable because that section provides recourse only for offers or sales made in violation of Section 5. See 15 U.S.C. 77*l*(a)(1).

[12] Section 12(a)(2) also imposes civil liability for oral communications containing material misstatements or omissions. 15 U.S.C. 77*l*(a)(2).

[13] Letter dated September 23, 1982, from then Division of Corporation Finance Director, Lee B. Spencer, Jr. to Marc L. Berman, then Senior Vice President and General Counsel, of the Options Clearing Corporation. On its face, the text of Rule 135b does not address the applicability of Section 12 liability. In its interpretive letter, the Division noted that the limiting language ''for purposes only of Section 5 of the Act'' appearing in Rule 135b is intended to clarify that the ODD would be subject to the antifraud provisions of Section 17(a) of the Securities Act [15 U.S.C. 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)], but is not intended to suggest that the ODD remains subject to Section 12(a)(2) liability.

[14] Release No. 33–7550 (July 1, 1998) [63 FR 36136].

12(a)(2) liability to an ODD.[15] In response to informal requests from the Chicago Board Options Exchange and the OCC, we intend to reduce uncertainty in this area. We received two letters of comment on the 1998 proposal to amend Rule 135b.[16] Both letters supported clarification of the Section 12(a)(2) liability issue.

As noted above, the ODD informs investors of the general characteristics of standardized options and the rules of options trading. Because of the general nature of this document, the ODD does not encourage investors to invest in any particular standardized option. Rather, the ODD merely provides background information about standardized options. Therefore, we believe that the ODD is neither an offer under the Securities Act nor a prospectus and therefore is not subject to Section 12(a)(2) liability.[17]

Accordingly, we are adopting the proposed change to Rule 135b to codify the Division of Corporation Finance's position that an ODD prepared in accordance with Exchange Act Rule 9b–1 is not subject to liability under Securities Act Section 12(a)(2).[18]

III. Costs and Benefits

We solicited comment to assist us in our evaluation of the costs and benefits associated with the change to Rule 135b. In response, we received two comment letters from affected parties, the Philadelphia Stock Exchange and the OCC. Both commenters supported the amendment. The OCC noted that the amendment would eliminate uncertainty in this area of the law, which would be beneficial to all parties. The amendment will not result in any new costs because it simply codifies the long-standing interpretive position of the Division of Corporation Finance that an ODD prepared in accordance with Exchange Act Rule 9b–1 is not a prospectus and thus is not subject to liability under Section 12(a)(2) of the Securities Act. By reducing any uncertainty in the courts concerning the applicability of Section 12(a)(2) liability to an ODD, we anticipate that the amendment will reduce the time and money spent by plaintiffs, the options exchanges, the OCC and the courts in pursuing, defending and dismissing such claims.

As stated above, at least one federal district court has ruled that a claim may exist under Section 12(a)(2) even though the Division's interpretive position was in place.[19] This type of conflicting ruling has added to the cost of defending and adjudicating claims and added uncertainty regarding the Section 12(a)(2) liability issue. In addition, the OCC has informed us of another suit currently pending in which the plaintiffs have claimed that the ODD is subject to Section 12(a)(2) liability. We also contacted the OCC to help estimate the dollar cost of the uncertainty, which includes the cost of legal services. They were not able to provide dollar estimates because of the difficulty of separating the costs of defending one claim among a number of claims. Although it is not possible to quantify the extent to which plaintiffs would bring such suits in the future absent the amendment, we expect the rule clarification to result in cost savings to plaintiffs, defendants and courts by reducing any further need for these parties to address this issue.

IV. Effects on Efficiency, Competition and Capital Formation

We sought and received no comments on the amendment's effects on efficiency, competition and capital formation. The amendment to Rule 135b is intended to reduce the OCC's and the exchanges' risk of Section 12(a)(2) liability for the contents of the ODD. We do not expect this rule to have a negative impact on efficiency, competition and capital formation for the following reasons:

This amendment reduces the legal risks to the OCC as issuer. But the OCC does not receive the proceeds from the sale of these securities. Rather, it acts as the clearing agent between the buyers and sellers of the securities. As such, the risk to the seller is unchanged by this rule and will not impact the economic incentives of buyers and seller to transact. This rule therefore should have no impact on capital formation.

To the extent that this rule reduces the risk of legal actions against the OCC and the exchanges on the basis of differences of interpretation in Section 12(a)(2) liability, this rule will reduce the resources spent by the OCC and exchanges addressing suits. This rule therefore should increase the efficiency of the OCC and exchanges.

We do not expect the amendment to have a significant impact on competition because the OCC is currently the only clearing corporation for standardized options trading on exchanges in the United States. Any new clearing corporations in the United States would benefit from the clarification equally with the OCC. Similarly, the exchanges will equally benefit from the clarification. However, to the extent that the options exchanges and the OCC compete with foreign markets for the trading of standardized options, by improving the efficiency of these entities, the amendment will have some positive effect on the exchanges' and the OCC's ability to compete in this market.

V. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment will not have a significant economic impact on a substantial number of small entities. This certification, including the reasons supporting the certification, was attached to the proposing release, Release No. 33–7550, as Appendix A. We solicited comments on the potential impact of the amendment on small entities, but received no comments.

VI. Statutory Basis

We are adopting the amendment to Securities Act Rule 135b pursuant to Sections 2(a)(10), 2(b), 7, 10, 19(a) and 28 of the Securities Act, as amended.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

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[15] See, for example, *Spicer* v. *Chicago Board Options Exchange*, No. 88 C 2139 (N.D. Ill. Oct. 24, 1990) (deciding that an ODD could be subject to Section 12(a)(2) liability), *motion to reconsider denied* (Jan. 24, 1991), *summary judgment granted* (Dec. 9, 1992) (finding in favor of the OCC on the Section 12(a)(2) claim on other grounds). We have never considered inclusion of the statement referring to the ODD that is required by Form S–20 as having the effect of incorporating the ODD by reference into the Form S–20 prospectus. Accordingly, we have added language to Rule 135b stating that the ODD shall not be deemed a prospectus for purposes of Sections 2(a)(10) and 12(a)(2) (15 U.S.C. 77b(a)(10) and 77l(a)(2)) of the Act, even if it is referred to in, deemed to be incorporated by reference into, or otherwise in any manner deemed to be a part of a Form S–20 prospectus.

[16] See the comment letters from Options Clearing Corporation (Aug. 26, 1998) and the Philadelphia Stock Exchange (Aug. 28, 1998). The comments we received are available in our Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549, in File No. S7–19–98.

[17] We note that this amendment is consistent with Congress' exemption of security futures products from Section 12(a)(2) liability. Congress generally intended that we treat standardized options and securities futures products similarly. See, for example, Exchange Act Section 6(h)(3)(C) [15 U.S.C. 78f(h)(3)(C)].

[18] Of course, the document would continue to be subject to the antifraud liability provisions of Section 17(a) of the Securities Act [15 U.S.C. 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)], and Rule 10b–5 under the Exchange Act [17 CFR 240.10b–5]. Thus, we believe that the rule, if amended as proposed, would continue to be consistent with protection of investors.

[19] See *Spicer* v. *Chicago Board Options Exchange* in note 15 above.

Text of the Rule Amendment

■ In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The general authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Revise § 230.135b to read as follows:

§ 230.135b Materials not deemed an offer to sell or offer to buy nor a prospectus.

Materials meeting the requirements of § 240.9b–1 of this chapter shall not be deemed an offer to sell or offer to buy a security for purposes solely of Section 5 (15 U.S.C. 77e) of the Act, nor shall such materials be deemed a prospectus for purposes of Sections 2(a)(10) and 12(a)(2) (15 U.S.C. 77b(a)(10) and 77*l*(a)(2)) of the Act, even if such materials are referred to in, deemed to be incorporated by reference into, or otherwise in any manner deemed to be a part of a Form S–20 prospectus.

By the Commission.

Dated: December 21, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–32079 Filed 12–31–01; 8:45 am]

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Wednesday,
January 2, 2002

Part V

Securities and Exchange Commission

17 CFR Part 230
Options Disclosure Document; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–8049; File No. S7–19–98]

RIN 3235–AH31

Options Disclosure Document

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting a revision to a rule under the Securities Act of 1933 to clarify that an options disclosure document prepared in accordance with our rules under the Securities Exchange Act of 1934 is not a prospectus and is not subject to civil liability under Section 12(a)(2) of the Securities Act. This amendment codifies a long-standing interpretive position taken by the Division of Corporation Finance soon after we adopted the current registration and disclosure system applicable to standardized options in 1982. We are codifying this position to reduce the legal uncertainty regarding the liability issue.

EFFECTIVE DATE: February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ray Be, Special Counsel, at (202) 942–2910, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION: We are adopting a revision to Rule 135b [1] under the Securities Act of 1933.[2]

I. Background

In 1998, we issued a release proposing an amendment to Rule 135b under the Securities Act to clarify that an options disclosure document prepared in accordance with Rule 9b–1 under the Securities Exchange Act of 1934 is not a prospectus and, accordingly, is not subject to civil liability under Section 12(a)(2) of the Securities Act.[3]

This clarification is consistent with the original intent of the simplified registration and disclosure system for standardized options that we adopted in 1982.[4] Under this system, the issuer of the standardized options, generally a clearing corporation, may register the options under the Securities Act on Form S–20.[5] This form is quite streamlined. The Form S–20 prospectus includes limited information about the clearing corporation issuer and the options being registered.[6] The registration statement includes additional information about the issuer's directors and executive officers and legal proceedings as well as its financial statements.

Investors are informed about the general characteristics of standardized options and the rules of options trading through a separate disclosure document we refer to as the ''options disclosure document'' or the ''ODD.'' The ODD must meet the informational requirements of Rule 9b–1 under the Exchange Act. In addition to setting forth what information must be disclosed in the ODD, Rule 9b–1 requires brokers and dealers to furnish a copy of the ODD to a customer before or at the time they approve that customer's account or accept the customer's order to trade options covered by the ODD. The exchanges on which the registered options trade work closely with the clearing corporation to prepare and update the ODD.[7]

We adopted the simplified registration and disclosure system applicable to standardized options primarily to reduce the expense of preparing and updating a detailed prospectus, and to provide investors with a document that is easier to read and understand than a traditional options prospectus.[8] Securities Act Rule 135b and its adopting release provide that an ODD prepared in accordance with Rule 9b–1 under the Exchange Act ''shall not be deemed to constitute an offer to sell or offer to buy any security'' for purposes only of Section 5 of the Securities Act.[9] In that adopting release, we stated that ''[f]or purposes of clarification, it should be noted that if the disclosure document is deemed not to be an offer to sell or buy, it cannot be deemed to be a prospectus.'' [10] In addition, we stated that Rule 135b ''is intended to relieve the preparers of the disclosure document from liability under Section 12(1) [now Section 12(a)(1)] of the [Securities] Act for distributing a disclosure document to investors which might, absent such relief, violate Section 5 of the [Securities] Act.'' [11]

However, Rule 135b and its adopting release both are silent as to whether the ODD is subject to liability under Section 12(a)(2) of the Securities Act. Section 12(a)(2) generally imposes civil liability on a person using a prospectus that contains material misstatements or omissions to offer or sell a security.[12]

Shortly after we adopted Rule 135b, the Options Clearing Corporation, commonly known as the OCC, requested interpretive advice from the Division of Corporation Finance regarding the applicability of Section 12(a)(2) liability to an ODD. After considering the rule's adopting release, the Division advised the OCC that in its view, an ODD ''is not a prospectus within the meaning of Section 2(10) [now Section 2(a)(10)] of the Securities Act and, thus, is not subject to liability under Section 12(2) [now Section 12(a)(2)] of the Securities Act.'' [13] In 1998, we proposed and sought comment on a revision to Rule 135b to clarify that the ODD is not subject to Section 12(a)(2) liability.[14]

II. Discussion

Despite this long-standing interpretive position, some uncertainty continues to exist about the applicability of Section

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[1] 17 CFR 230.135b.

[2] 15 U.S.C. 77a *et seq*.

[3] Release No. 33–7550 (July 1, 1998) [63 FR 36136].

[4] Release No. 33–6426 (Sept. 16, 1982) [47 FR 41950]. Rule 9b–1(a)(4) [17 CFR 240.9b–1(a)(4)] under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq*.] defines standardized options as ''options contracts trading on a national securities exchange, an automated quotations system of a registered securities association, or a foreign securities exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.''

[5] 17 CFR 239.20.

[6] Rule 153b [17 CFR 230.153b] allows the issuer to satisfy its Securities Act Section 5(b)(2) [15 U.S.C. 77e(b)(2)] prospectus delivery requirement by delivering copies of the prospectus to each exchange on which the options are traded. The exchange then must deliver the prospectus to options customers upon request.

[7] See Release No. 34–43461 (Oct. 19, 2000) [65 FR 64137].

[8] Release No. 33–6426, see note 3 above; see also Release No. 33–6494, n.2 (Oct. 27, 1983) [48 FR 51328] (discussing the Commission's 1979 Special Study of the Options Market, recommending the simplified registration and disclosure scheme).

[9] 15 U.S.C. 77e. However, as stated in the release proposing Rule 135b, the ODD is subject to liability under the antifraud provisions of the federal securities laws. See Release No. 33–6411 (June 24, 1982) [47 FR 28688].

[10] Release No. 33–6426, see note 3 above.

[11] Release No. 33–6426, see note 3 above. Because Rule 135b states that Section 5 does not apply to distribution of the ODD, it is clear that Section 12(a)(1) liability is inapplicable because that section provides recourse only for offers or sales made in violation of Section 5. See 15 U.S.C. 77*l*(a)(1).

[12] Section 12(a)(2) also imposes civil liability for oral communications containing material misstatements or omissions. 15 U.S.C. 77*l*(a)(2).

[13] Letter dated September 23, 1982, from then Division of Corporation Finance Director, Lee B. Spencer, Jr. to Marc L. Berman, then Senior Vice President and General Counsel, of the Options Clearing Corporation. On its face, the text of Rule 135b does not address the applicability of Section 12 liability. In its interpretive letter, the Division noted that the limiting language ''for purposes only of Section 5 of the Act'' appearing in Rule 135b is intended to clarify that the ODD would be subject to the antifraud provisions of Section 17(a) of the Securities Act [15 U.S.C. 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)], but is not intended to suggest that the ODD remains subject to Section 12(a)(2) liability.

[14] Release No. 33–7550 (July 1, 1998) [63 FR 36136].

12(a)(2) liability to an ODD.[15] In response to informal requests from the Chicago Board Options Exchange and the OCC, we intend to reduce uncertainty in this area. We received two letters of comment on the 1998 proposal to amend Rule 135b.[16] Both letters supported clarification of the Section 12(a)(2) liability issue.

As noted above, the ODD informs investors of the general characteristics of standardized options and the rules of options trading. Because of the general nature of this document, the ODD does not encourage investors to invest in any particular standardized option. Rather, the ODD merely provides background information about standardized options. Therefore, we believe that the ODD is neither an offer under the Securities Act nor a prospectus and therefore is not subject to Section 12(a)(2) liability.[17]

Accordingly, we are adopting the proposed change to Rule 135b to codify the Division of Corporation Finance's position that an ODD prepared in accordance with Exchange Act Rule 9b–1 is not subject to liability under Securities Act Section 12(a)(2).[18]

III. Costs and Benefits

We solicited comment to assist us in our evaluation of the costs and benefits associated with the change to Rule 135b. In response, we received two comment letters from affected parties, the Philadelphia Stock Exchange and the OCC. Both commenters supported the amendment. The OCC noted that the amendment would eliminate uncertainty in this area of the law, which would be beneficial to all parties. The amendment will not result in any new costs because it simply codifies the long-standing interpretive position of the Division of Corporation Finance that an ODD prepared in accordance with Exchange Act Rule 9b–1 is not a prospectus and thus is not subject to liability under Section 12(a)(2) of the Securities Act. By reducing any uncertainty in the courts concerning the applicability of Section 12(a)(2) liability to an ODD, we anticipate that the amendment will reduce the time and money spent by plaintiffs, the options exchanges, the OCC and the courts in pursuing, defending and dismissing such claims.

As stated above, at least one federal district court has ruled that a claim may exist under Section 12(a)(2) even though the Division's interpretive position was in place.[19] This type of conflicting ruling has added to the cost of defending and adjudicating claims and added uncertainty regarding the Section 12(a)(2) liability issue. In addition, the OCC has informed us of another suit currently pending in which the plaintiffs have claimed that the ODD is subject to Section 12(a)(2) liability. We also contacted the OCC to help estimate the dollar cost of the uncertainty, which includes the cost of legal services. They were not able to provide dollar estimates because of the difficulty of separating the costs of defending one claim among a number of claims. Although it is not possible to quantify the extent to which plaintiffs would bring such suits in the future absent the amendment, we expect the rule clarification to result in cost savings to plaintiffs, defendants and courts by reducing any further need for these parties to address this issue.

IV. Effects on Efficiency, Competition and Capital Formation

We sought and received no comments on the amendment's effects on efficiency, competition and capital formation. The amendment to Rule 135b is intended to reduce the OCC's and the exchanges' risk of Section 12(a)(2) liability for the contents of the ODD. We do not expect this rule to have a negative impact on efficiency, competition and capital formation for the following reasons:

This amendment reduces the legal risks to the OCC as issuer. But the OCC does not receive the proceeds from the sale of these securities. Rather, it acts as the clearing agent between the buyers and sellers of the securities. As such, the risk to the seller is unchanged by this rule and will not impact the economic incentives of buyers and seller to transact. This rule therefore should have no impact on capital formation.

To the extent that this rule reduces the risk of legal actions against the OCC and the exchanges on the basis of differences of interpretation in Section 12(a)(2) liability, this rule will reduce the resources spent by the OCC and exchanges addressing suits. This rule therefore should increase the efficiency of the OCC and exchanges.

We do not expect the amendment to have a significant impact on competition because the OCC is currently the only clearing corporation for standardized options trading on exchanges in the United States. Any new clearing corporations in the United States would benefit from the clarification equally with the OCC. Similarly, the exchanges will equally benefit from the clarification. However, to the extent that the options exchanges and the OCC compete with foreign markets for the trading of standardized options, by improving the efficiency of these entities, the amendment will have some positive effect on the exchanges' and the OCC's ability to compete in this market.

V. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment will not have a significant economic impact on a substantial number of small entities. This certification, including the reasons supporting the certification, was attached to the proposing release, Release No. 33–7550, as Appendix A. We solicited comments on the potential impact of the amendment on small entities, but received no comments.

VI. Statutory Basis

We are adopting the amendment to Securities Act Rule 135b pursuant to Sections 2(a)(10), 2(b), 7, 10, 19(a) and 28 of the Securities Act, as amended.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

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[15] See, for example, *Spicer* v. *Chicago Board Options Exchange*, No. 88 C 2139 (N.D. Ill. Oct. 24, 1990) (deciding that an ODD could be subject to Section 12(a)(2) liability), *motion to reconsider denied* (Jan. 24, 1991), *summary judgment granted* (Dec. 9, 1992) (finding in favor of the OCC on the Section 12(a)(2) claim on other grounds). We have never considered inclusion of the statement referring to the ODD that is required by Form S–20 as having the effect of incorporating the ODD by reference into the Form S–20 prospectus. Accordingly, we have added language to Rule 135b stating that the ODD shall not be deemed a prospectus for purposes of Sections 2(a)(10) and 12(a)(2) (15 U.S.C. 77b(a)(10) and 77l(a)(2)) of the Act, even if it is referred to in, deemed to be incorporated by reference into, or otherwise in any manner deemed to be a part of a Form S–20 prospectus.

[16] See the comment letters from Options Clearing Corporation (Aug. 26, 1998) and the Philadelphia Stock Exchange (Aug. 28, 1998). The comments we received are available in our Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549, in File No. S7–19–98.

[17] We note that this amendment is consistent with Congress' exemption of security futures products from Section 12(a)(2) liability. Congress generally intended that we treat standardized options and securities futures products similarly. See, for example, Exchange Act Section 6(h)(3)(C) [15 U.S.C. 78f(h)(3)(C)].

[18] Of course, the document would continue to be subject to the antifraud liability provisions of Section 17(a) of the Securities Act [15 U.S.C. 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. 78j(b)], and Rule 10b–5 under the Exchange Act [17 CFR 240.10b–5]. Thus, we believe that the rule, if amended as proposed, would continue to be consistent with protection of investors.

[19] See *Spicer* v. *Chicago Board Options Exchange* in note 15 above.

Text of the Rule Amendment

■ In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The general authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Revise § 230.135b to read as follows:

§ 230.135b Materials not deemed an offer to sell or offer to buy nor a prospectus.

Materials meeting the requirements of § 240.9b–1 of this chapter shall not be deemed an offer to sell or offer to buy a security for purposes solely of Section 5 (15 U.S.C. 77e) of the Act, nor shall such materials be deemed a prospectus for purposes of Sections 2(a)(10) and 12(a)(2) (15 U.S.C. 77b(a)(10) and 77*l*(a)(2)) of the Act, even if such materials are referred to in, deemed to be incorporated by reference into, or otherwise in any manner deemed to be a part of a Form S–20 prospectus.

By the Commission.

Dated: December 21, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–32079 Filed 12–31–01; 8:45 am]

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Federal Register

Wednesday,
January 2, 2002

Part VI

Securities and Exchange Commission

17 CFR Parts 228, 229, 240, and 249
Disclosure of Equity Compensation Plan Information; Final Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 240 and 249

[Release Nos. 33–8048, 34–45189; File No. S7–04–01]

RIN 3235–AI01

Disclosure of Equity Compensation Plan Information

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: We are adopting amendments to the Securities Exchange Act of 1934 disclosure requirements applicable to annual reports filed on Forms 10–K and 10–KSB and to proxy and information statements. The amendments will enhance disclosure of the number of outstanding options, warrants and rights granted by registrants to participants in equity compensation plans, as well as the number of securities remaining available for future issuance under these plans. The amendments require registrants to provide this information separately for equity compensation plans that have not been approved by their security holders, and to file with us copies of these plans unless immaterial in amount of significance.

DATES: Effective Date: February 1, 2002. *Compliance Dates:* Registrants must comply with the new disclosure requirements for their annual reports on Forms 10–K or 10–KSB to be filed for fiscal years ending on or after March 15, 2002 and for proxy and information statements for meetings of, or action by, security holders occurring on or after June 15, 2002. Registrants voluntarily may comply with the new disclosure requirements before the compliance dates.

Comments: Comments on the ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 should be received by February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mark A. Borges, Special Counsel, Office of Rulemaking, Division of Corporation Finance, by telephone at (202) 942–2910, or in writing at the Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Items 201 [1] and 601 [2] of Regulation S–B,[3] Items 201 [4] and 601 [5] of Regulation S–K [6] and Form 10–K, [7] Form 10–KSB [8] and Schedule 14A [9] under the Securities Exchange Act of 1934.[10] Schedule 14C [11] under the Exchange Act also is affected by the amendments.[12]

I. Introduction

As the use of equity compensation has increased during the last decade,[13] so have concerns about its impact on registrants and their security holders.[14] Equity compensation grants and awards may result in a significant reallocation of ownership between existing security holders and management and employees.[15] Our current rules do not require disclosure in a single location of the total number of securities that a registrant has remaining available for issuance under all of its equity compensation plans. Also, because these plans may be implemented without the approval of security holders, it is possible that investors may not be able to determine the total size of a registrant's equity compensation program.

In January 2001, we proposed amendments to our equity compensation disclosure rules, where our intent was to furnish investors with a more understandable presentation of a registrant's equity compensation program.[16] We received 31 comment letters in response to the proposals.[17] While a majority of commenters supported the proposals, several questioned the need for disclosure that was, in their view, substantially equivalent to disclosure already required in registrants' audited financial statements. In addition, many of the supportive commenters offered suggestions for refining the proposals to better accomplish the goal of assuring that all material information about a registrant's equity compensation program is fully and clearly disclosed. We have made a number of changes to the proposals in response to these comments. These changes are discussed in Section II of this release.

As a result of today's amendments, registrants must include a new table in their annual reports on Form 10–K,[18] as well as in their proxy statements [19] in years when they are submitting a compensation plan for security holder action. This table requires information about two categories of equity compensation plans: plans that have been approved by security holders and plans that have not been approved by security holders. With respect to each category, a registrant must disclose the number of securities to be issued upon the exercise, and the weighted-average exercise price, of all outstanding options, warrants and rights, as well as the number of securities remaining available for future issuance under the registrant's equity compensation plans.[20]

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[1] 17 CFR 228.201.

[2] 17 CFR 228.601.

[3] 17 CFR 228.10 *et seq.*

[4] 17 CFR 229.201.

[5] 17 CFR 229.601.

[6] 17 CFR 229.10 *et seq.*

[7] 17 CFR 249.310.

[8] 17 CFR 249.310b.

[9] 17 CFR 240.14a–101.

[10] 15 U.S.C. § 78a *et seq.*

[11] 17 CFR 240.14c–101.

[12] Item 1 of Schedule 14C requires that a registrant yfurnish the information called for by all of the items of Schedule 14A (other than Items 1(c), 2, 4 and 5) which would be applicable to any matter to be acted upon at the meeting if proxies were to be solicited in connection with the meeting.

[13] A study of stock-based pay practices at the nation's 200 largest corporations indicates that these companies allocated 15.2% of outstanding shares (calculated on a fully-diluted basis) for management and employee equity incentives in 2000, compared to only 6.9% in 1989. See Pearl Meyers & Partners, Inc., *2000 Equity Stake, Study of Management Equity Participation in the Top 200 Corporations* (2000).

[14] See Eric D. Roiter, *The NYSE Wrestles with Shareholder Approval of Stock Option Plans*, Corp. Gov. Adv., Vol. 8, No. 1 (Jan./Feb. 2000), at 1. See also, for example, Justin Fox, *The Amazing Stock Option Sleight of Hand*, Fortune, June 25, 2001, at 86.

[15] In its most recent study, the Investor Responsibility Research Center found that the average potential dilution for the 1,500 companies in the ''S&P Super 1,500'' (the combination of the S&P 500, the S&P MidCap 400 and the S&P SmallCap 600) was 14.6% in 2000, compared to 11.6% in 1997; an increase of approximately 26%. The increase was even greater for S&P 500 companies, with average potential dilution rising to 13.1% in 2000, compared to 9.2% in 1995. See Investor Responsibility Research Center, *Potential Dilution—2000, The Potential Dilution from Stock Plans at the S&P Super 1,500 Companies* (2000) (the ''IRRC Dilution Study'').

[16] The amendments were proposed in Release No. 33–7944 (Jan. 26, 2001) [66 FR 8732] (the ''Proposing Release'').

[17] The commenters included 11 individual and institutional investors, eight registrants and registrant associations (one registrant submitted two letters), one self-regulatory organization and 10 members of the executive compensation consulting, accounting and legal communities. These comment letters and a summary of comments prepared by our staff are available for public inspection and copying in our Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549, in File No. S7–04–01. Public comments submitted electronically and the summary of comments are available on our Web site *http://www.sec.gov*.

[18] The discussion of Form 10–K in this release also includes Form 10–KSB.

[19] The discussion of proxy statements in this release also includes Schedule 14C information statements.

[20] To help investors better understand equity compensation, our Office of Investor Education and Assistance will create educational materials about the available disclosure on equity compensation programs (including the information available in financial statements).

II. Discussion of Amendments

A. Content of Disclosure

1. Required Disclosure

Under the original proposals described in the Proposing Release, registrants were to disclose in tabular form several categories of information about their equity compensation plans, including the number of securities authorized for issuance under each plan, the number of securities issued, plus the number of securities to be issued upon the exercise of outstanding options, warrants or rights granted, under each plan during the last fiscal year, the number of securities to be issued upon the exercise of outstanding options, warrants or rights granted other than in the last fiscal year and the number of securities remaining available for future issuance under each plan. The proposals would have required registrants to list each plan separately in the table. We also sought comment as to whether any additional categories of information should be included in the table.

In response to concerns that the proposals would be costly and burdensome to implement and duplicative of some of the information required in registrants' financial statements, we have eliminated the first two proposed categories of disclosure. We have made a number of other changes as well, including a change that permits registrants to present the required information on an aggregated basis. These changes are discussed in detail below.

In addition to comments suggesting that we scale back the proposed disclosure, we also received comments citing the need for additional types of disclosure not originally proposed. For example, several commenters suggested that we add a column to the proposed table showing the weighted-average exercise price of outstanding options, warrants and rights.[21] These commenters asserted that investors need this information to assess the dilutive effect of a registrant's equity compensation program.[22] To enable investors to better understand dilution and to enhance the visibility of exercise price information, we have added a column to the table requiring disclosure of the weighted-average exercise price of all outstanding compensatory options, warrants and rights.[23]

As adopted, the amendments require a registrant to provide investors with the following tabular disclosure:

EQUITY COMPENSATION PLAN INFORMATION

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
	(a)	(b)	(c)
Equity compensation plans approved by security holders			
Equity compensation plans not approved by security holders			
Total			

Registrants must provide the disclosure with respect to any equity compensation plan[24] in effect[25] as of the end of the registrant's last completed fiscal year that provides for the award of a registrant's securities or the grant of options, warrants or rights to purchase the registrant's securities to employees of the registrant or its parent, subsidiary or affiliated companies, or to any other person.[26] The disclosure also is to be provided without regard to whether the securities to be issued under the equity compensation plan are authorized but unissued securities of the registrant or reacquired shares.

2. Aggregated Disclosure

Several commenters suggested that we permit registrants to provide the required tabular disclosure on an aggregate, rather than a plan-by-plan, basis.[27] These commenters indicated that it would be unduly burdensome for many registrants if plans had to be listed separately in the table.[28] Another commenter expressed similar concerns if registrants were required to itemize plans assumed as the result of mergers, consolidations or other acquisition transactions.[29] We are persuaded that plan-by-plan disclosure may be

[21] See, for example, the Letter dated March 26, 2001 from the Council of Institutional Investors (the ''CII Letter''), the Letter dated April 24, 2001 from the Association for Investment Management and Research and the Letter dated April 16, 2001 from the Association of the Bar of the City of New York (the ''NYC Bar Letter'').

[22] While the impact of outstanding options, warrants and rights is contained in the presentation of diluted earnings-per-share required by Statement of Financial Accounting Standards No. 128, *Earnings-Per-Share* (Feb. 1997) (''SFAS 128''), this disclosure does not necessarily isolate ''compensatory'' instruments. Typically, the diluted earnings-per-share figure combines the dilutive effect of compensatory options, warrants and rights with that of other outstanding convertible securities.

[23] See new Item 201(d)(2)(ii) of Regulation S–B [17 CFR 228.201(d)(2)(ii)] and new Item 201(d)(2)(ii) of Regulation S–K [17 CFR 229.201(d)(2)(ii)]. This weighted-average exercise price information may be different from that contained in a registrant's financial statements as required by Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation* (Oct. 1995) (''SFAS 123'') because the information includes grants and awards to non-employees while the information required by SFAS 123 may not. See n. 55 below.

[24] This includes any equity compensation plan that provides for grants and awards to employees or non-employees in exchange for consideration in the form of goods or services as described in SFAS 123.

[25] For purposes of the amendments, we consider an equity compensation plan to be in effect as long as securities remain available for future issuance under the plan, or as long as options, warrants or rights previously granted under the plan remain outstanding.

[26] Disclosure is required without regard to whether participants are employees (including officers) or non-employees (such as directors, consultants, advisors, vendors, customers, suppliers or lenders).

[27] See, for example, the Letter dated May 7, 2001 from the American Bar Association (the ''ABA Letter''), the Letter dated April 2, 2001 from Lucent Technologies Inc. and the Letter dated May 22, 2001 from the New York State Bar Association (the ''NY State Bar Letter'').

[28] One commenter estimated that, based upon the number of equity compensation plans it administers, compliance could cost an additional $300,000 annually for printing and distribution. See the Letter dated April 9, 2001 from Lucent Technologies Inc. (the ''Second Lucent Letter'').

[29] See the Letter dated February 27, 2001 from Intel Corporation (the ''Intel Letter'').

[30] In addition, information on the number and identity of a registrant's equity compensation plans should be available in the footnotes to the registrant's financial statements as part of its required SFAS 123 disclosure. See paragraph 46 of SFAS 123.

burdensome for many registrants.[30] Accordingly, we have revised the table to permit registrants to aggregate disclosure in two general categories:

- equity compensation plans approved by security holders; and
- equity compensation plans not approved by security holders.[31]

In the Proposing Release, we sought comment as to whether, when a registrant is submitting a new or existing equity compensation plan for security holder action, the required proxy statement disclosure should include that plan.[32] Several commenters suggested that we expand the table to include information about an existing plan upon which further action is being taken (for example, where a registrant is seeking the approval of security holders for an increase in the number of securities authorized for issuance under the plan).[33] These commenters indicated that, absent this requirement, a registrant amending an existing equity compensation plan otherwise might avoid disclosing information about the securities previously authorized for issuance under the plan. We are persuaded that registrants should include this information in the table.

Accordingly, where action is being taken to amend an existing equity compensation plan, the table should include information about the securities previously authorized for issuance under the plan; that is, the number of securities to be issued upon the exercise, and the weighted-average exercise price, of outstanding options, warrants and rights previously granted under the plan and the number of securities remaining available for future issuance under the plan.[34] A registrant should not include in the table the number of additional securities that are the subject of the plan amendment for which the registrant is seeking security holder approval.

3. Individual Arrangements and Assumed Plans

In the Proposing Release, we sought comment as to whether aggregated disclosure of individual equity compensation arrangements[35] was appropriate. We also asked whether aggregated disclosure should be permitted where a registrant had assumed an equity compensation plan in connection with a merger, consolidation or other acquisition transaction. Several commenters supported aggregated disclosure of individual arrangements,[36] and one commenter was in favor of aggregating the disclosure of individual arrangements with the disclosure of equity compensation plans.[37] Other commenters favored permitting aggregated disclosure of assumed plans.[38] Consistent with the concept of aggregated plan disclosure, we have revised the table to permit registrants to combine information about individual arrangements[39] and assumed plans (where further grants and awards can be made under these plans)[40] with information about other plans, all in the appropriate disclosure category.

4. Non-Security Holder-Approved Plans

As adopted, the amendments require a registrant to identify and describe briefly, in narrative form, the material features of each equity compensation plan in effect as of the end of the last completed fiscal year that was adopted without security holder approval.[41] While several commenters supported this requirement,[42] one commenter suggested that we permit registrants to cross-reference the portion of their required SFAS 123 disclosure containing descriptions of their non-security holder-approved plans to satisfy this requirement.[43] Because it streamlines compliance and ensures that investors have annual[44] access to this information, we are permitting registrants to satisfy the disclosure requirement in this manner.[45] The cross-reference should identify the specific plan or plans in the required SFAS 123 disclosure that have not been approved by security holders. In view of this change, we have eliminated the provision that would have permitted a registrant to satisfy this disclosure requirement by simply identifying the filing containing a narrative description of the plan in the years following the initial disclosure.

5. Foreign Registrants

Some commenters inquired about the applicability of the proposals to foreign registrants. Historically, we have applied a more flexible standard to foreign registrants than domestic registrants in the area of executive compensation disclosure. For example, foreign registrants need not disclose executive compensation information on an individual basis unless they disclose it in that manner under home country law or otherwise.[46] We do not find it necessary to vary from our historical treatment of executive compensation disclosure for foreign registrants,[47] and,

[31] See new Item 201(d)(1) of Regulation S–B [17 CFR 228.201(d)(1)] and new Item 201(d)(1) of Regulation S–K [17 CFR 229.201(d)(1)].

[32] These plans otherwise are subject to the disclosure requirements of Item 10 of Schedule 14A. Item 10 requires a description of the material features of, and tabular disclosure of the benefits receivable or allocable under, the plan being acted upon, as well as additional information regarding specific types of plans.

[33] See, for example, the CII Letter, the Letter dated March 28, 2001 from the State of Wisconsin Investment Board (the ''SWIB Letter'') and the Letter dated March 29, 2001 from the Teachers Insurance and Annuity Association—College Retirement Equities Fund (the ''TIAA-CREF Letter'').

[34] See Instruction 1 to new Item 10(c) of Schedule 14A.

[35] For these purposes, an individual equity compensation arrangement includes a ''plan'' for a single person as defined by Item 402(a)(7)(ii) of Regulation S–K [17 CFR 229.402(a)(7)(ii)] (''A plan may be applicable to one person.''), as well as an individual ''written compensation contract'' (see, for example, the Securities Act Rule 405 [17 CFR 230.405] definition of the term ''employee benefit plan'').

[36] See, for example, the NY State Bar Letter and the TIAA–CREF letter.

[37] See the ABA Letter.

[38] See the Intel Letter, the Letter dated August 17, 2001 from Leonard S. Stein and the Letter dated August 26, 2001 from Hendrick Vater.

[39] See Instruction 4 to new Item 201(d) of Regulation S–B [17 CFR 228.201(d)] and Instruction 4 to new Item 201(d) of Regulation S–K [17 CFR 229.201(d)].

[40] See Instruction 5 to new Item 201(d) of Regulation S–B and Instruction 5 to new Item 201(d) of Regulation S–K. In the case of individual options, warrants and rights assumed in connection with a merger, consolidation or other acquisition transaction, registrants should disclose the number of securities underlying the assumed options, warrants and rights and the related weighted-average exercise price information on an aggregated basis in a footnote to the table. *Id.*

[41] See new Item 201(d)(3) of Regulation S–B [17 CFR 228.201(d)(3)] and new Item 201(d)(3) of Regulation S–K [17 CFR 229.201(d)(3)].

[42] See, for example, the CII Letter, the Letter dated April 2, 2001 from the Investment Company Institute and the TIAA–CREF Letter.

[43] See the NYC Bar Letter. Similar cross-referencing is permitted under Item 101(b) (financial information about segments) and Item 101(d) (financial information about geographic areas) of Regulation S–K [17 CFR 229.101(b) and (d)].

[44] As originally proposed, the plan description would have been provided only once—following the year of adoption. The Proposing Release contemplated that, in subsequent years, registrants simply would identify the prior filing containing the plan description. Since SFAS 123 requires plan descriptions to be provided annually, the information will be available each year.

[45] See Instruction 7 to new Item 201(d) of Regulation S–B and Instruction 7 to new Item 201(d) of Regulation S–K. Paragraph 46 of SFAS 123 requires a description of each stock-based compensation plan, including the general terms of awards under the plan, such as vesting requirements, the maximum term of options granted and the number of shares authorized for grants of options or other equity instruments. See also paragraph 362 of SFAS 123. If the SFAS 123 plan description does not contain all of the material features of the plan, cross-referencing is not permitted.

[46] See Item 6.B of Form 20–F [17 CFR 249.220f]. Item 6.B requires disclosure of compensation information about a foreign private issuer's directors and senior management on an aggregated basis, including the amount of compensation paid and benefits in kind granted.

[47] Item 6.E.2 of Form 20–F requires a foreign private issuer to ''describe any arrangements for involving the employees in the capital of the

thus, we do not extend the amendments to foreign registrants at this time.[48]

B. Relationship to Accounting Disclosure

We have made significant changes to the proposals in response to arguments by several commenters that the current accounting literature provides for adequate disclosure about stock-based compensation.[49] We agree that we should strive to minimize redundant disclosure under generally accepted accounting principles and our rules, where practical. Accordingly, we have revised the proposals and will not require disclosure of

- The number of securities authorized for issuance under each equity compensation plan; [50] and
- The number of securities issued, plus the number of securities to be issued upon the exercise of outstanding options, warrants or rights granted, under each plan during the last fiscal year.[51]

The revised table will provide useful information to investors that is not always readily available in a registrant's financial statements.[52] This includes

- An indication of whether an equity compensation plan has been approved by security holders; [53]
- The total number of securities available for future issuance under a registrant's equity compensation program; [54] and
- The number of options and other securities granted or awarded to non-employees for compensatory purposes.[55]

Because this information may be important to investors in making informed voting and investment decisions, we believe it is appropriate to require all registrants subject to Exchange Act reporting to disclose it regularly.

Even where information, such as the number of securities to be issued upon the exercise, and the weighted-average exercise price, of outstanding options, warrants and rights, otherwise is available, it is not transparent to investors.[56] The amendments enhance the accessibility of this information, thereby making it easier for investors to assess the impact of a registrant's equity compensation policies and practices. Moreover, the amendments present the information in categories—plans that have been approved by security holders and plans that have not been approved by security holders—that investors have requested.[57]

The following table reflects the current relevant SFAS 123 disclosure requirements for stock-based compensation [58] and the new disclosure required by the amendments being adopted today, as adjusted to minimize redundancy between the two.

Equity compensation disclosure Item	Required by SFAS 123	Required by Item 201	Required by Item 601	Location of disclosure (financial statements/form 10-K/proxy by statement)
Description of general terms of each plan	Yes (¶ 46)	No	No	Financial Statements.
Number of securities authorized for grants of options or other equity instruments.	Yes (¶ 46)	No	No	Financial Statements.
Number and weighted-average exercise price of:				
Options outstanding at beginning of year	Yes (¶ 47a)	No	No	Financial Statements.
Options outstanding at end of year	Yes (¶ 47a)	Yes*	No	Financial Statements/Form 10–K/ Proxy Statement.**
Options exercisable at end of year	Yes (¶ 47a)	No	No	Financial Statements.
Options granted during year	Yes (¶ 47a)	No	No	Financial Statements.
Options exercised during year	Yes (¶ 47a)	No	No	Financial Statements.
Options forfeited during year	Yes (¶ 47a)	No	No	Financial Statements.
Options expired during year	Yes (¶ 47a)	No	No	Financial Statements.

company, including any arrangement that involves the issue or grant of options or shares or securities of the company.''

[48] In addition, while the use of equity compensation by foreign companies is increasing, it still trails use by U.S. companies. See Towers Perrin, *Stock Options Around the World* (2001).

[49] See the Letter dated April 2, 2001 from Arthur Andersen LLP, the Letter dated April 17, 2001 from the American Institute of Certified Public Accountants, the Letter dated March 29, 2001 from Emerson Electric Co., the Letter dated March 26, 2001 from the Institute of Management Accountants, the Letter dated April 12, 2001 from Microsoft Corporation, the Letter dated April 2, 2001 from PricewaterhouseCoopers LLP, the NY State Bar Letter and the Letter dated March 30, 2001 from Verizon Communications. These commenters also pointed out that duplicative disclosure is inconsistent with initiatives that we jointly have undertaken with the accounting profession to simplify disclosure and eliminate redundancies in financial reporting. See FASB Business Reporting Research Project, *Report of GAAP–SEC Disclosure Requirements Working Group* (2001), available at *http://www.rarc.rutgers.edu/fasb/brrp/BRRP3pl.PDF.*

[50] This information is required by paragraph 46 of SFAS 123.

[51] This information is required by paragraphs 47(a) and (c) of SFAS 123.

[52] See *Report of the New York Stock Exchange Special Task Force on Stockholder Approval Policy* (Oct. 1999) (the ''NYSE Task Force Report''), at 14, available at *http://www.nyse.com/pdfs/policy.pdf.*

[53] While SFAS 123 requires an entity to provide a description of each stock-based compensation plan, these descriptions need not indicate whether a plan has been approved by security holders. See paragraphs 46 and 362 of SFAS 123.

[54] Paragraph 46 of SFAS 123 provides for disclosure of the number of shares authorized for grants of options or other equity instruments pursuant to stock-based compensation plans. It does not specifically require disclosure of the *current* number of authorized shares available for grant. In addition, it may be difficult for investors to determine this number. Currently, a registrant submitting an equity compensation plan for security holder action need not provide any specific disclosure about its other equity compensation plans. In its annual study on stock plan dilution, the Investor Responsibility Research Center found that approximately 22% of the companies surveyed did not disclose the number of shares available for future issuance under their employee stock plans. See the IRRC Dilution Study.

[55] Paragraph 46 of SFAS 123 provides that ''[a]n entity that uses equity instruments to acquire goods or services other than employee services shall provide disclosures similar to those required [for employee transactions] *to the extent that those disclosures are important* in understanding the effects of those transactions on the financial statements'' (emphasis added). Consequently, a registrant has discretion to exclude non-employee grants and awards of equity instruments from its SFAS 123 disclosure. In addition, registrants need not apply the disclosure provisions of SFAS 123 to immaterial items, as determined based on a registrant's particular circumstances. See paragraph 244 of SFAS 123.

[56] See, for example, the NYSE Task Force Report, n. 52 above, at 14 (''The requisite information [to make dilution calculations] is not consistently available in any one place or format in corporate disclosure documents * * * .), the Letter dated April 2, 2001 from the Association of Publicly Traded Companies (''[t]he sheer volume and complexity of most corporate compensation proposals, coupled with stock option plans, makes it difficult for the average investor to interpret and effectively utilize the information provided.'') and the TIAA–CREF Letter (''[l]ack of transparency * * * limits the ability of shareholders * * * to protect themselves against plans that can be highly dilutive.'').

[57] See the Proposing Release at n. 17.

[58] This table does not describe all of the information that registrants must disclose under SFAS 123.

Equity compensation disclosure Item	Required by SFAS 123	Required by Item 201	Required by Item 601	Location of disclosure (financial statements/form 10-K/proxy by statement)
Terms of significant modifications of outstanding awards.	Yes (¶ 47f)	No	No	Financial Statements.
Range of exercise prices for outstanding options.	Yes (¶ 48)	No	No	Financial Statements.
Weighted-average exercise price of outstanding options and similar instruments.	Yes (¶ 48)	Yes*	No	Financial Statements/Form 10–K/Proxy Statement.**
Weighted-average remaining contractual life of outstanding options.	Yes (¶ 48)	No	No	Financial Statements.
Number of securities remaining available for future issuance.	No	Yes*	No	Form 10-K/Proxy Statement.**
Description of material terms of each plan that has not been approved by security holders.	No	Yes	No	Form 10-K/Proxy Statement.**
Filing of compensatory plans in which named executive officers and directors participate and any other compensatory plan unless immaterial.	No	No	Yes	Form 10-K.

*Disclosed by category: plans approved by security holders and plans not approved by security holders.
**May be incorporated by reference into the annual report on Form 10-K by including in proxy statement.

C. Location of Disclosure

As proposed, registrants were to include the table in the proxy statement whenever they submitted a compensation plan for security holder action and in the annual report on Form 10–K in all other years. In the Proposing Release, we sought comment as to whether the proposed location of the disclosure was appropriate. Most commenters suggested that, for consistency and to avoid confusion, we should require disclosure in the same document each year.[59] Citing the relevance of the information when electing directors, several commenters suggested that we require disclosure in the proxy statement in all instances, even if a registrant were not submitting a compensation plan for security holder action.[60] Other commenters, on the other hand, recommended that we require the disclosure only in the annual report on Form 10–K.[61]

Although the idea of requiring the disclosure in a single location is appealing, we have elected not to do so for several reasons. If we adopted a requirement that the table appear only in proxy statements, a significant number of companies whose reporting obligations arise solely under Section 15(d) of the Exchange Act[62] would not be subject to the requirement. These companies are not required to prepare and file proxy statements. Further, we are not persuaded that, as a general rule, the proposed disclosure is material to voting decisions by security holders other than those relating to compensation plans.[63]

We also do not believe that the table should be located exclusively in the annual report on Form 10–K. Although the annual report on Form 10–K is filed with us, a registrant is not required to deliver it to security holders.[64] Thus, security holders must take some affirmative action to obtain the information.[65] In addition, limiting the table to the annual report on Form 10–K would misplace the disclosure in those cases when the information would be useful to investors in assessing the merits of a compensation plan submitted for security holder action.[66]

[59] In the Proposing Release, we also sought comment as to whether the table should be required in registration statements filed under the Securities Act of 1933 [15 U.S.C. §§ 77a *et seq.*]. While no commenter favored a blanket requirement for all registration statements, two commenters suggested that registrants include the table in registration statements filed in connection with initial public offerings. See the NYC Bar Letter and the NY State Bar Letter. Two commenters expressly opposed a registration statement disclosure requirement. See the ABA Letter and the Letter dated June 11, 2001 from the New York Stock Exchange (the ''NYSE Letter''). Generally, registrants already include information about the possible effects of future sales of securities, including outstanding options, in registration statements for initial public offerings to the extent that this information is material. Item 506 of Regulation S–K [17 CFR 229.506] requires specific information in a registration statement filed in connection with an initial public offering about dilution, as well as with respect to common equity securities that have been acquired by officers and directors. In addition, Item 201(a)(2) of Regulation S–K [17 CFR 229.201(a)(2)] requires disclosure of the amount of common equity that is subject to outstanding options or warrants. Further information is available pursuant to the disclosure required by Item 402 of Regulation S–K. Accordingly, except where the table is part of an annual report on Form 10–K or 10–KSB that is incorporated by reference into a prospectus, we are not extending the disclosure requirements to registration statements at this time. See Instruction 10 to new Item 201(d) of Regulation S–B and Instruction 10 to new Item 201(d) of Regulation S–K.

[60] See, for example, the ABA Letter, the CII Letter and the SWIB Letter.

[61] See, for example, the Letter dated March 29, 2001 from Ernst &Young LLP, the Second Lucent Letter and the NYC Bar Letter.

[62] 15 U.S.C. § 78o(d).

[63] Some commenters argued that even where a registrant is not submitting a compensation plan for security holder action, the new disclosure contains relevant information with respect to the backgrounds and compensation of directors and executive officers that should be available for evaluation in connection with the election of directors. In general, we find the relevance of the new disclosure to be somewhat attenuated from decisions regarding the election of directors. Moreover, there would be little connection when a nominee has not served previously as a director of the registrant. Finally, the relevance of the new disclosure to decisions concerning the remuneration of directors and officers also is questionable because the table requires general information that does not specifically identify director and executive officer awards.

[64] Registrants are required, however, to provide security holders with an annual report to security holders pursuant to Exchange Act Rule 14a–3(b) [17 CFR 240.14a–3(b)] when soliciting proxies in connection with an annual meeting of security holders at which directors are to be elected. Typically, this annual report to security holders includes the financial statements of the registrant, including the required SFAS 123 disclosure. In some instances, registrants use their annual report on Form 10–K to satisfy this delivery requirement. See Exchange Act Rule 14a–3(d) [17 CFR 240.14a–3(d)].

[65] Under Exchange Act Rule 14a–3(b)(10) [17 CFR 240.14a–3(b)(10)], a registrant must include in its proxy statement or annual report an undertaking to provide without charge to each security holder solicited, upon written request, a copy of the registrant's annual report on Form 10–K. Once filed, the annual report on Form 10–K also is available via our Electronic Data Gathering, Analysis and Retrieval, or EDGAR, system.

[66] Another possible location for the table is the annual report to security holders required by Exchange Act Rule 14a–3(b). This alternative has several drawbacks, however. First, because it is not considered a ''filed'' document, the annual report is not subject to the express civil liability provisions of Section 18 of the Exchange Act [15 U.S.C. § 78r]. See Exchange Act Rule 14a–3(c) [17 CFR 240.14a–3(c)]. Second, as with proxy statements, the disclosure would not apply to registrants subject to reporting solely under Section 15(d) of the Exchange Act. Finally, because principally financial information is required to be included in the annual report, non-financial disclosure such as the table would appear out of place.

We have concluded that the best way to promote consistency, clarity and relevant placement of the new information is to require that the table be included each year in a registrant's annual report on Form 10–K [67] and, additionally, in the proxy statement when the registrant is submitting a compensation plan for security holder action.[68] In situations where a registrant is required to include the information in both filings, it may satisfy its Form 10–K disclosure obligation by incorporating the required information by reference from its definitive proxy statement, if that statement involves the election of directors and is filed not later than 120 days after the end of the fiscal year covered by the Form 10–K.[69]

D. Filing Copies of Non-Security Holder-Approved Plans

In the Proposing Release, we sought comment as to whether, in lieu of, or in addition to, the narrative disclosure required for an equity compensation plan that has been adopted without the approval of security holders, a registrant should be required to file a copy of the plan as an exhibit to the registrant's annual report on Form 10–K for the fiscal year in which the plan was adopted.[70] Several commenters favored a filing requirement in addition to requiring registrants to provide narrative disclosure of the ''material features'' of non-security holder-approved equity compensation plans.[71]

Item 601(b)(10) of Regulation S–K [72] requires registrants to file material contracts as exhibits to many of their documents filed under the Securities Act of 1933 (the ''Securities Act'') and the Exchange Act. Of particular relevance is the provision in Item 601(b)(10)(iii) stating that ''any management contract or other compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing * * * in which any director or any of the named executive officers of the registrant * * * participates shall be deemed material and shall be filed.'' [73] Item 601(b)(10)(iii) also states that ''any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the registrant participates shall be filed unless immaterial in amount or significance.'' [74] Some commenters expressed concern that non-security holder-approved plans, many of which exclude executive officers and directors, often do not fall within these provisions.[75]

We believe this concern has merit. Accordingly, we have amended Item 601(b)(10) to require registrants to file any equity compensation plan adopted without the approval of security holders in which any employee (whether or not an executive officer or director of the registrant) participates, unless immaterial in amount or significance.[76] Compliance with this requirement should ensure that significant non-security holder-approved plans are available to investors.[77] Coupled with the required narrative description of non-security holder-approved plans, investors should have access to complete information about a registrant's principal equity compensation plans.

III. Paperwork Reduction Act Analysis

The amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995, [78] or PRA. We published a notice requesting comment on the collection of information requirements in the Proposing Release, and submitted these requirements to the Office of Management and Budget, or OMB, for review.[79] Subsequently, OMB approved the proposed information collection requirements.

As discussed in Section I above, we received several comment letters on the proposals. We have made a number of changes to the proposals in response to these comments. Accordingly, we are revising our previous burden estimates. We are submitting the revised estimates to the OMB for approval.[80] An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

A. Summary of Amendments

The amendments require tabular disclosure of the number of securities to be issued upon the exercise, and the weighted-average exercise price, of all outstanding options, warrants and rights under a registrant's equity compensation plans, as well as the number of securities remaining available for future issuance under these plans and certain related information. Disclosure is to be made in two categories: plans that have been approved by security holders and plans that have not been approved by security holders. Registrants must include the table in their annual reports on Form 10–K or 10–KSB, and, additionally, in their proxy or information statements in years when they are submitting a compensation plan for security holder action. Registrants also must file copies of their non-security holder-approved plans with us, unless immaterial in amount or significance. Preparing and filing an annual report on Form 10–K or 10–KSB is a collection of information. Similarly, preparing, filing and disseminating a proxy or information statement is a collection of information.[81] The collection of

[67] See revised Item 12 of Part III of Form 10–K and revised Item 11 of Part III of Form 10–KSB.

[68] See new Item 10(c) of Schedule 14A. Proxy or information statement disclosure is triggered by the submission of any compensation plan for security holder action, including cash-only plans.

[69] Similar incorporation by reference is permitted with respect to the other disclosure items required by Part III of Form 10–K and 10–KSB. See General Instruction E(3) to Form 10–KSB and General Instruction G(3) to Form 10–K.

[70] See Section II.A.4 above.

[71] See, for example, the CII Letter, the SWIB Letter and the TIAA–CREF Letter. Other commenters suggested that we require registrants to file copies of all equity compensation plans (whether or not approved by security holders). See the ABA Letter and the NYSE Letter.

[72] 17 CFR 229.601(b)(10).

[73] 17 CFR 229.601(b)(10)(iii)(A). Nondiscriminatory, broad-based compensatory plans, contracts or arrangements are exempt from this requirement. See Item 601(b)(10)(iii)(B)(*4*) [17 CFR 229.601(b)(10)(iii)(B)(*4*)].

[74] *Id.*

[75] See, for example, the CII Letter and the Letter dated March 29, 2001 from the Office of the State Comptroller of the State of New York.

[76] See new Item 601(b)(10)(iii)(B) of Regulation S–B [17 CFR 228.601(b)(10)(iii)(B)] and new Item 601(b)(10)(iii)(B) of Regulation S–K [17 CFR 229.601(b)(10)(iii)(B)]. This is consistent with our action in 1981 amending then-Item 7 of Regulation S–K to reformulate the definition of ''material contracts'' as applied to remunerative plans, contracts or arrangements. See Release No. 33–6287 (Feb. 6, 1981) [46 FR 11952]. Previously, we had indicated that remuneration plans in which directors or executive officers of the registrant did not participate generally did not need to be filed as exhibits. See Release No. 33–6230, Section II.A.2.b.i. (Aug. 27, 1980) [45 FR 58822].

[77] With respect to an existing non-security holder-approved equity compensation plan subject to new Item 601(b)(10)(iii)(B) of Regulation S–B or new Item 601(b)(10)(iii)(B) of Regulation S–K that is in effect as of the effective date of these amendments and that has not been filed previously, a copy of the plan must be filed as an exhibit to the annual report on Form 10–K or 10–KSB filed by the registrant for its first fiscal year ending on or after March 15, 2002.

[78] 44 U.S.C. § 3501 *et seq.*

[79] Publication and submission were in accordance with 44 U.S.C. § 3507(d) and 5 CFR 1320.11.

[80] The titles for the collections of information affected by the amendments are (1) ''Regulation 14A (Commission Rules 14a–1 through 14b–2 and Schedule 14A),'' (2) ''Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C),'' (3) ''Form 10–K,'' (4) ''Form 10–KSB,'' (5) ''Regulation S–B'' and (6) ''Regulation S–K.''

[81] The likely respondents subject to the collections of information include entities whose reporting obligations arise under the Exchange Act. The reporting requirements of Section 13 of the Exchange Act [15 U.S.C. § 78m], as well as the proxy disclosure requirements of Section 14 of the

Continued

information is mandatory for all registrants and there is no mandatory retention period for the information collected. The collection of information will not be kept confidential.

B. Summary of Comment Letters and Revisions to Proposals

We requested comment on the PRA analysis contained in the Proposing Release. We received six comment letters specifically addressing the estimated paperwork burden associated with the collections of information.[82] These commenters indicated that the amount of time required to comply with the proposals would be significant for many registrants and substantially greater than our estimates. One commenter estimated that, if adopted, the proposals would add at least four pages to its disclosure documents and, where the disclosure appeared in the proxy statement, would result in additional printing costs of $100,000 and additional mailing costs of $200,000 for the extra pages.[83] Another commenter suggested that we offset any increased costs to registrants by eliminating current requirements that do not result in the disclosure of useful information.[84] A third commenter suggested that we consider providing a model form of disclosure for small businesses to reduce their compliance burden.[85]

In response to these comments, we have made a number of changes to the proposals, including eliminating two of the proposed tabular columns and permitting aggregated disclosure. We also are permitting registrants with non-security holder-approved plans to describe the material terms of these plans by cross-referencing to their SFAS 123 disclosure. These changes will streamline compliance and, correspondingly, reduce the burden on registrants. While the amendments require the filing of non-security holder-approved equity compensation plans unless immaterial in amount or significance, this should not increase the burden for registrants significantly as these documents are readily available and will be filed electronically.

C. Revisions to Reporting and Cost Burden Estimates

As a result of the changes described above and a change in one of our underlying assumptions,[86] the reporting and cost burden estimates for the collections of information have changed. Accordingly, we have revised the estimated information collection requirements that were originally submitted to the OMB. With respect to Forms 10–K and 10–KSB, we have increased our estimate by 1,174 hours in the case of Form 10–K and increased our estimate by 707 hours in the case of Form 10–KSB. With respect to Schedules 14A and 14C, we have decreased our estimate by 13,139 hours in the case of Schedule 14A and decreased our estimate by 139 hours in the case of Schedule 14C.

Our estimates are based on several assumptions. First, we estimate that approximately 60%[87] of the registrants that file an annual report on either Form 10–K or 10–KSB maintain equity compensation plans and will be required to provide the new disclosure table.[88] We also estimate that approximately 20%[89] of these registrants maintain non-security holder-approved equity compensation plans and, thus will be required to describe the material features of these plans and file copies with us unless immaterial in amount or significance.[90] We further estimate that, in any year, 30%[91] of the registrants with equity compensation plans will either adopt a new plan or amend an existing plan to increase the number of securities authorized for issuance under the plan, thereby triggering proxy or information statement disclosure.[92] In this situation,

Exchange Act, apply to entities that have securities registered under Section 12 of the Exchange Act [15 U.S.C. § 78l]. The reporting requirements of Section 15(d) of the Exchange Act apply to entities with effective registration statements under the Securities Act that are not otherwise subject to the registration requirements of Section 12 of the Exchange Act.

[82] See the Letter dated April 17, 2001 from the American Institute of Certified Public Accountants (the ''AICPA Letter''), the Letter dated April 2, 2001 from the Association of Publicly-Traded Companies (the ''APTC Letter''), the Letter dated April 2, 2001 from Lucent Technologies Inc. (the ''First Lucent Letter''), the Letter dated May 22, 2001 from the New York State Bar Association, the Letter dated August 17, 2001 from Leonard S. Stein (the ''Stein Letter'') and the Letter dated August 26, 2001 from Hendrick Vater.

[83] See the Letter dated April 9, 2001 from Lucent Technologies Inc.

[84] See the APTC Letter.

[85] See the Stein Letter.

[86] We have changed our assumption about the number of registrants with equity compensation plans that, in any year, either adopt a new plan or amend an existing plan to increase the number of securities authorized for issuance under the plan. In the Proposing Release, we estimated that 50% of the registrants with equity compensation plans would either adopt a new plan or amend an existing plan each year. Based on the available survey data, we have revised this assumption to 30%. See n. 91 below.

[87] This estimate is made after a review of available survey data, which varies widely. For example, in its most recent study of the ''S&P Super 1,500'' (the combination of the S&P 500, the S&P MidCap 400 and the S&P SmallCap 600), the Investor Responsibility Research Center determined that, of the 1,157 companies examined, 1,142 (98.7%) awarded equity to some portion of their employees. See Investor Responsibility Research Center, *Potential Dilution—2000, The Potential Dilution from Stock Plans at the S&P Super 1,500 Companies* (2000). In contrast, a Pilot Survey conducted by the Bureau of Labor Statistics in 1999 determined that 22% of publicly-held companies offered stock options to their employees. This survey sampled 2,100 ''establishments,'' of which approximately 1 in 10 were publicly-held companies. See Bureau of Labor Statistics, *Pilot Survey on the Incidence of Stock Options in Private Industry in 1999*, (Oct. 11, 2000), available at *http://www.bls.gov/ncs/ocs/sp/ncnr0001.txt*. Further, in the Proposing Release we sought comment as to whether our estimates of the burden of the proposed collections of information were accurate. We received no comment letters responding to that request. Because of variations in the available data, we also have estimated the reporting and cost burdens for the proposed collections of information assuming that 98% of the registrants that file annual reports on Form 10–K or 10–KSB maintain an equity compensation plan and are subject to the required disclosure. See nn. 108 and 110 below.

[88] Based on the actual number of registrants filing annual reports on Form 10–K and 10–KSB, we estimate that 6,229 registrants that file on Form 10–K (10,381 × 60%) maintain equity compensation plans (''Form 10–K Filers'') and 2,185 registrants that file on Form 10–KSB (3,641 × 60%) maintain equity compensation plans (''Form 10–KSB Filers'').

[89] In the Proposing Release, we estimated that this figure was 25%. The available survey data does not appear to be representative of the general registrant population. See William M. Mercer, Inc., *Equity Compensation Survey* (2001) (48% of survey respondents (83 participants) maintained non-security holder-approved stock option plans for employees below management level; 60% of such plans most prevalent in large companies (more than 5,000 employees)); iQuantic, Inc., *Trends in Equity Compensation 1996–2000* (2000) (27.3% of survey respondents in 1999 (161 participants) maintained non-security holder-approved stock option plans, compared to 3.2% before 1996). After discussions with several compensation professionals, we reduced our estimate to 20%.

[90] We estimate that of the Form 10–K Filers, 1,246 (6,229 × 20%) maintain a non-security holder-approved equity compensation plan (''Form 10–K Filers with Non-Approved Plans'') and 4,983 (6,229 × 80%) do not (''Form 10–K Filers with Only Approved Plans''). We estimate that of the Form 10–KSB Filers, 437 (2,185 × 20%) maintain a non-security holder-approved equity compensation plan (''Form 10–KSB Filers with Non-Approved Plans'') and 1,748 (2,185 × 80%) do not (''Form 10–KSB Filers with Only Approved Plans'').

[91] This estimate is based on a review of available survey data. In its most recent study, the Investor Responsibility Research Center determined that, of 1,157 companies studied in calendar year 2000, 337 (29%) presented proposals for new or amended equity compensation plans to security holders. See Investor Responsibility Research Center, *Potential Dilution—2000, The Potential Dilution from Stock Plans at the S&P Super 1,500 Companies* (2000). In its most recent study, Pearl Meyers & Partners found that new plan authorizations among the top 200 companies were submitted by 58 companies in 2000 (29%). See Pearl Meyers & Partners, Inc., *2000 Equity Stake, Study of Management Equity Participation in the Top 200 Corporations (2000).*

[92] We estimate that of the Form 10–K Filers with Only Approved Plans, 1,495 (4,983 × 30%) submit a new or amended equity compensation plan for security holder approval annually (''Form 10–K Filers with Only Approved Plans Subject to Section 14'') and of the Form 10–K Filers with Non-Approved Plans, 374 (1,246 × 30%) submit a new or amended equity compensation plan for security holder approval annually (''Form 10–K Filers with Non-Approved Plans Subject to Section 14''). Similarly, we estimate that of the Form 10–KSB

we have assumed that a registrant will include the required disclosure in its proxy or information statement and incorporate that disclosure by reference into its annual report on Form 10–K or 10–KSB. We estimate that approximately 28%[93] of the registrants filing annual reports on Form 10–K or 10–KSB are subject to Section 13 of the Exchange Act by virtue of Section 15(d) of the Exchange Act and, thus, do not file proxy or information statements,[94] and that approximately 98%[95] of the registrants file proxy, rather than information, statements in connection with their annual meeting of security holders at which directors are to be elected.[96] Finally, we estimate that preparation of the required tabular disclosure will take two burden hours and, where required, preparation of the description of the material features of a non-security holder-approved equity compensation plan will take two burden hours.[97]

Our revised estimate of the total burden hours of the required collections of information is set forth in the following table.

TABLE—BURDEN HOUR ESTIMATES

Form	Filings/year			Estimated burden hours/filing			Estimated burden hours/year	
	Estimated filings/year	Estimated filings subject to tabular disclosre	Estimated filings subject to tabular and narrative disclosrue	Before amendments	Adjusted for tabular disclosure	Adjusted for tabular and narrative disclosure	Before amendments	After amendments
	(A)	(B)	(C)	(D)	(E)[98]	(F)[99]	(G) = (A) x (D)	(H) = (B) x (E) + (C) x (F)
0-K	10,381	[100] 3,907	[101] 977	430	430.4	430.6	4,463,830	4,469,691
10-KSB	3,641	[102] 1,371	[103] 343	294	294.4	294.6	1,070,454	1,072,511
14A	9,892	[104] 1,423	[105] 356	18.2	18.3	18.4	179,966	182,101
14C	253	[106] 30	[107] 7	18.1	18.2	18.3	4,582	4,626
Total							5,718,832	5,728,929

Filers with Only Approved Plans, 524 (1,748 × 30%) submit a new or amended equity compensation plan for security holder approval annually (''Form 10–KSB Filers with Only Approved Plans Subject to Section 14'') and of the Form 10–KSB Filers with Non-Approved Plans, 131 (437 × 30%) submit a new or amended equity compensation plan for security holder approval annually (''Form 10–KSB Filers with Non-Approved Plans Subject to Section 14'').

[93] This estimate is based on a comparison of the actual number of registrants filing annual reports on Form 10–K or 10–KSB during the 2000 fiscal year (10,381 + 3,641 = 14,022) with the actual number of registrants filing proxy or information statements during the 2000 fiscal year (9,892 + 253 = 10,145), or 10,145/14,022.

[94] Thus, we have subtracted 419 registrants (1,495 × 28%) from the group of Form 10–K Filers with Only Approved Plans Subject to Section 14, 105 registrants (374 × 28%) from the group of Form 10–K Filers with Non-Approved Plans Subject to Section 14, 147 registrants (524 × 28%) from the group of Form 10–KSB Filers with Only Approved Plans Subject to Section 14 and 37 registrants (131 × 28%) from the group of Form 10–KSB Filers with Non-Approved Plans Subject to Section 14.

[95] This estimate is based on a comparison of the actual number of registrants filing proxy statements during the 2000 fiscal year (9,982) with the actual number of registrants filing information statements during the same period (253), or 9,982/10,145.

[96] Thus, we estimate that of the 1,076 Form 10–K Filers with Only Approved Plans Subject to Section 14, 1,054 (1,076 × 98%) will file proxy statements and 22 will file information statements, of the 269 Form 10 × K Filers with Non-Approved Plans Subject to Section 14, 264 (269 × 98%) will file proxy statements and five will file information statements, of the 377 Form 10–KSB Filers with Only Approved Plans Subject to Section 14, 369 (377 × 98%) will file proxy statements and eight will file information statements and of the 94 Form 10–KSB Filers with Non-Approved Plans Subject to Section 14, 92 (94 × 98%) will file proxy statements and two will file information statements.

[97] Even though we have streamlined compliance in order to reduce the burden on registrants, we have not reduced the number of estimated burden hours to prepare the required disclosure. This decision is in response to comments that our initial burden hour estimate was too low. See the AICPA Letter and the First Lucent Letter.

In addition to the internal hours they will expend,[108] we expect that registrants will retain outside counsel to assist in the preparation of the required disclosures.[109] The total dollar cost of complying with Form 10–K and Form 10–KSB, revised to include outside counsel costs expected from the amendments, is estimated to be $2,345,268,300 for Form 10–K, an increase of $1,758,300 from the current annual burden of $2,343,510,000, and $562,605,100 for Form 10–KSB, an increase of $617,100 from the current annual burden of $561,988,000. The total dollar cost of complying with Regulations 14A and 14C, revised to include outside counsel costs expected from the amendments, are estimated to be $93,254,500 for Regulation 14A, an increase of $640,500 from the current annual burden of $92,614,000, and $2,382,200 for Regulation 14C, an increase of $13,200 from the current annual burden of $2,369,000.[110]

D. Request for Comment

We request comment in order to (a) evaluate whether the collections of information are necessary for the proper performance of our functions, including whether the information will have practical utility, (b) evaluate the accuracy of our estimate of the burden of the collections of information, (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected and (d) evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology.[111]

Any member of the public may direct to us any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, with reference to File No. S7–04–01. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7–04–01 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. Costs and Benefits of Final Rules

A. Background

The use of equity compensation, particularly stock options, has grown significantly during the last decade.[112] Consequently, existing security holders may face higher levels of dilution of their ownership interests as some companies issue more shares of their stock to employees.[113] Since the distribution of equity may result in a significant reallocation of ownership in an enterprise between existing security holders and management and employees, investors have a strong interest in understanding a registrant's equity compensation program.[114]

Until recently, security holder approval was required for most equity compensation plans. However, as approval requirements have been relaxed[115] and as opposition to these plans has grown,[116] an increasing number of registrants have adopted stock option plans without the approval of security holders,[117] thus potentially obscuring investors' ability to assess the dilutive effect of a registrant's equity compensation program. Our current rules do not require that a registrant disclose specific information about its non-security holder-approved equity compensation plans.[118] Nor do current

[98] We estimate that registrants will prepare 50% of the required disclosure and outside counsel will prepare the remaining 50%. Accordingly, this estimate reflects the addition of one burden hour to prepare the required tabular disclosure. See n. 97 above and the accompanying text.

[99] We estimate that registrants will prepare 50% of the required disclosure and outside counsel will prepare the remaining 50%. Accordingly, this estimate reflects the addition of two burden hours to prepare the required tabular and narrative disclosure. See n. 97 above and the accompanying text.

[100] We arrived at this estimate by taking the number of Form 10–K Filers (see n. 88 above) and subtracting (a) the number of Form 10–K Filers with Non-Approved Plans (see n. 90 above) and (b) the number of Form 10–K Filers with Only Approved Plans Subject to Section 14 (see nn. 92 and 94 above), or (6,229 − 1,246 − 1,076).

[101] We arrived at this estimate by taking the number of Form 10–K Filers with Non-Approved Plans (see n. 90 above) and subtracting the number of Form 10–K Filers with Non-Approved Plans Subject to Section 14 (see nn. 92 and 94 above), or (1,246 − 269).

[102] We arrived at this estimate by taking the number of Form 10–KSB Filers (see n. 88 above) and subtracting (a) the number of Form 10–KSB Filers with Non-Approved Plans (see n. 90 above) and (b) the number of Form 10–KSB Filers with Only Approved Plans Subject to Section 14 (see nn. 92 and 94 above), or (2,185 − 437 − 377).

[103] We arrived at this estimate by taking the number of Form 10–KSB Filers with Non-Approved Plans (see n. 90 above) and subtracting the number of Form 10–KSB Filers with Non-Approved Plans Subject to Section 14 (see nn. 92 and 94 above), or (437 − 94).

[104] We arrived at this estimate by taking the number of Form 10–K Filers with Only Approved Plans Subject to Section 14 that will file proxy statements and adding the number of Form 10–KSB Filers with Only Approved Plans Subject to Section 14 that will file proxy statements (see n. 96 above), or (1,054 + 369).

[105] We arrived at this estimate by taking the number of Form 10–K Filers with Non-Approved Plans Subject to Section 14 that will file proxy statements and adding the number of Form 10–KSB Filers with Non-Approved Plans Subject to Section 14 that will file proxy statements (see n. 96 above), or (264 + 92).

[106] We arrived at this estimate by taking the number of Form 10–K Filers with Only Approved Plans Subject to Section 14 that will file information statements and adding the number of Form 10–KSB Filers with Only Approved Plans Subject to Section 14 that will file information statements (see n. 96 above), or (22 + 8).

[107] We arrived at this estimate by taking the number of Form 10–K Filers with Non-Approved Plans Subject to Section 14 that will file information statements and adding the number of Form 10–KSB Filers with Non-Approved Plans Subject to Section 14 that will file information statements (see n. 96 above), or (5 + 2).

[108] Assuming that 98% of the registrants that file annual reports on Form 10–K or 10–KSB maintain an equity compensation plan and are subject to the required disclosure, the estimated burden hours per year resulting from the amendments would be 16,511 hours, increasing this estimate to 5,735,343 hours.

financial reporting disclosure rules require that non-security holder-approved plans be identified.[119]

Consequently, it is often difficult for investors to determine whether they have adequate information about a registrant's equity compensation program. In response to ongoing investor concerns,[120] in January 2001 we proposed amendments to our rules to enhance the quality of information available to investors about equity compensation plans.[121]

B. Response to Comment Letters

In the Proposing Release, we noted that registrants would incur costs in complying with the proposals. We also noted that these costs, to the extent that they could be estimated, would not be significant, as the required disclosure can be derived from information that is readily available to registrants through the routine administration of their equity compensation programs. We requested comment on the costs and benefits of the proposals. Of the comment letters we received, 22 respondents discussed the costs and benefits associated with the proposals.[122] Most of the comment letters addressed these matters in general terms.

Several respondents asserted that, because the proposals duplicated disclosure already required in registrants' audited financial statements, the cost of providing information to investors would increase without any useful benefit.[123] In response to these comments, we have revised the proposals to eliminate redundant disclosure and to minimize the overlap with financial reporting requirements, thereby reducing the cost of compliance. As discussed in Subsection C below, the amendments will enhance the quality of the disclosure available to investors about the dilutive effect of registrants' equity compensation programs.

Other respondents, while generally supporting the proposals, suggested that we scale back the required disclosure to reduce compliance costs. For example, some respondents indicated that requiring plan-by-plan disclosure would create an undue burden for registrants without providing an incremental benefit to investors.[124] In response to these comments, we have revised the proposals to permit aggregated disclosure of information about plans and individual equity compensation arrangements and to allow the required narrative summary of a non-security holder-approved stock option plan to be provided by a cross-reference to a description of the plan in a registrant's financial statements.[125] Some respondents suggested that we expand the required disclosure to include additional information, such as weighted-average exercise price data and information about existing equity compensation plans being submitted for security holder action. They also requested that we require the filing of non-security holder-approved equity compensation plans. We have made these changes.[126]

Most respondents suggested that the proposed disclosure be required in the same document each year, to both streamline compliance and to minimize investor confusion. While we carefully considered this suggestion, ultimately we concluded that these concerns were outweighed by the need for consistent application of the disclosure to all registrants.[127] Accordingly, the required disclosure is to be provided each year in a registrant's annual report on Form 10–K or 10–KSB and, additionally, in the proxy or information statement in years when the registrant is submitting a compensation plan for security holder action.

C. Benefits

1. Disclosure of Non-Security Holder-Approved Plans

New Item 201(d)(1) of Regulation S–K and Regulation S–B requires registrants to disclose whether they have one or more non-security holder-approved stock option plans by separately providing information about the dilutive effects of these plans. New Item 201(d)(3) of Regulation S–K and Regulation S–B requires that this disclosure be accompanied by a narrative summary of the material features of each non-security holder-approved plan. Also, as amended Item 601(b)(10) of Regulation S–K and Regulation S–B requires registrants to file a copy of any non-security holder-approved equity compensation plan with us unless the plan is immaterial in amount or significance.

Presently, it is difficult for investors to ascertain whether a registrant has adopted a non-security holder approved stock option plan.[128] If a plan is broad-based, restricts or prohibits the participation of officers and directors and does not permit the grant of tax-qualified stock options, for instance, it is unlikely to require security holder approval. Frequently, investors must examine the required public filings of a registrant made over several years in order to identify the registrant's stock option plans and determine if they have been approved by security holders. Even when a non-security holder-approved plan is identified, information about the plan may be limited since it may not be subject to our disclosure rules and may not be filed with us. The amendments will enable investors to ascertain if a registrant has adopted a non-security holder approved plan and highlight a

[109] One-half of the total burden resulting from the amendments is reflected as burden hours and the remainder is reflected in the total cost of complying with the information collection requirements. We have used an estimated hourly rate of $300.00 to determine the estimated cost to respondents of the disclosure prepared by outside counsel. We arrived at this hourly rate estimate after consulting with several private law firms.

[110] These cost burden increases reflect a change in our assumption of the number of registrants with equity compensation plans that either adopt a new plan or amend an existing plan to increase the number of securities authorized for issuance under the plan (see n. 85 above) and a change in the estimated hourly rate of outside counsel. With respect to Forms 10–K and 10–KSB, we increased our estimate by $937,300 in the case of Form 10–K and increased our estimate by $483,100 in the case of Form 10–KSB. With respect to Schedules 14A and 14C, we decreased our estimate by $8,089,500 in the case of Schedule 14A and decreased our estimate by $209,800 in the case of Schedule 14C. Assuming that 98% of the registrants that file annual reports on Form 10–K or 10–KSB maintain an equity compensation plan and are subject to the required disclosure, the estimated cost burden per year resulting from the amendments would be $4,946,400.

[111] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

[112] A study of stock-based pay practices at the nation's 200 largest corporations indicates that these companies allocated 15.2% of outstanding shares (calculated on a fully-diluted basis) for management and employee equity incentives in 2000, compared to only 6.9% in 1989. See Pearl Meyers & Partners, Inc., *2000 Equity Stake, Study of Management Equity Participation in the Top 200 Corporations* (2000). Both the size of individual awards and the number of companies that use equity broadly throughout the organization have increased significantly. See Core, Guay and Larcker, *Executive Equity Compensation and Incentives: A Survey,* Working Paper, University of Pennsylvania (2001), at 5–7.

[113] This question should be considered in the dilutive effect may already have occurred and is likely to be reflected in the basic earnings-per-share computation and security holders' equity data.

[122] These commenters included seven individual and institutional investors, four registrants and registrant associations, one self-regulatory organization and 10 members of the executive compensation consulting, accounting and legal communities.

[123] See, for example, the Letter dated April 2, 2001 from Arthur Andersen LLP (the ''AA Letter''), the Letter dated April 17, 2001 from the American Institute of Certified Public Accountants (the ''AICPA Letter''), the Letter dated March 29, 2001 from Emerson Electric Co., the Letter dated April 12, 2001 from Microsoft Corporation and the Letter dated April 2, 2001 from PricewaterhouseCoopers LLP (the ''PWC Letter'').

[127] See Section II.C above.

[128] Available information on non-security holder-approved stock option plans is sparse. See William M. Mercer, Inc. *Equity Compensation Survey* (2001) (48% of survey respondents (83 participants) maintained non-security holder-approved stock option plan for employees below management level; such plans (60%) most prevalent in large companies (more than 5,000 employees); iQuantic, Inc., *Trends in Equity Compensation 1996–2000* (2000) (27.3% of survey respondents in 1999 (161 participants) maintained non-security holder-approved stock option plans, compared to 3.2% before 1996).

description of the plan's material features.

2. Tabular Disclosure

New Item 201(d)(1) of Regulation S–K and Regulation S–B requires registrants to disclose, for their entire equity compensation program as in effect as of the end of the last completed fiscal year, the number of securities underlying, and the weighted-average exercise price of, outstanding options, warrants and rights and the number of securities remaining available for future issuance. This disclosure is to be made separately for plans approved by security holders and plans that have not been approved by security holders.

The required disclosure will assist investors in assessing the potential dilution from a registrant's equity compensation program in two ways. First, the required disclosure of the number of securities to be issued upon the exercise, and weighted-average exercise price, of all outstanding options, warrants and rights will enable investors to view this information in two categories: plans approved by security holders and plans not approved by security holders. While numerical and weighted-average exercise price information is presently available in the footnotes to a registrant's audited financial statements, this disclosure does not separately identify the potential dilutive effect of any non-security-holder approved stock option plans.

Second, disclosure of the number of securities available for future issuance under a registrant's equity compensation plans will enable investors to better calculate the ''overhang[129] resulting from the registrant's entire equity compensation program. Under existing disclosure requirements, it is not always possible to make this calculation.[130] This information may be useful to investors where the cost of a registrant's equity compensation plan exceeds its incentive effects. The new disclosure also will enhance the ability of investors and others, such as proxy review firms, to monitor the impact of a board of directors' actions concerning equity compensation matters. Access to this information will make it easier for investors to determine both the portion of the current value of a business that will be transferred to option holders upon exercise and the potential allocation of future cash flow rights.[131]

While the economic impact of outstanding options, warrants and rights is incorporated into the presentation of diluted earnings-per-share under SFAS 128, this calculation differs from the new disclosure in several ways. First, it does not isolate ''compensatory'' instruments. Typically, the diluted earnings-per-share figure combines the dilutive effect of compensatory options, warrants and rights with that of other outstanding convertible securities. Second, SFAS 128 employs the so-called ''treasury stock method'' to compute diluted earnings-per-share. Among other things, this methodology excludes ''out-of-the-money'' options and warrants from the computation and requires certain assumptions about the timing of option exercises and the use of the assumed proceeds of exercise to arrive at the total number of potentially dilutive securities. Finally, while weighted-average exercise price information is available for various option groupings under SFAS 123, it does not differentiate between equity compensation plans that have been approved by security holders and plans that have not been approved by security holders.

D. Costs

The amendments will increase the cost of preparing annual reports on Form 10–K and 10–KSB and proxy and information statements. Registrants must compile the required information, place it in the appropriate category and prepare the required table. In addition, registrants with non-security holder-approved stock option plans must prepare a narrative summary of the material features of each plan and file a copy of any material plan with us. Registrants also will incur an increase in printing and distribution costs as a result of the amendments.

While several respondents indicated that the cost estimates in the Proposing Release were too low,[132] only one provided an alternative cost estimate. This respondent stated that compliance could result in additional costs approximating $300,000 in years when disclosure was required in its proxy statement.[133] The respondent's estimate is no longer relevant because of the substantial revisions that we have made to the proposals, as discussed in Subsection B above.

The required disclosure will provide investors both with new information and with an alternative means for analyzing currently available information. With respect to the dilution disclosure, we believe that the compliance costs are warranted because this information is not otherwise available to investors. Moreover, these costs should be minimal because this information can be derived from information that is readily available to registrants through the routine administration of their equity compensation programs.

With respect to the information concerning non-security holder-approved stock option plans, much of the required tabular disclosure, such as the number of outstanding options, warrants and rights and the related weighted-average exercise price data, is already maintained for purposes of satisfying financial reporting requirements. The amendments merely require registrants to disclose this information on the basis of whether or not the related plan has been approved by security holders. In addition, many registrants summarize the material features of their equity compensation plans to satisfy their SFAS 123 disclosure obligations. Indeed, one respondent indicated that the amendments would result in only minimal additional costs to registrants because, in their experience, most registrants already maintain the required information in order to comply with SRO rules and for effective plan administration.[134]

Although the amendments will increase the length of registrants' annual reports on Form 10–K and 10–KSB, as well as their proxy and information statements, generally this should not have a major impact on a registrant's

[129] This measure may be formulated in different ways. For purposes of this discussion, ''overhang'' means the sum of the number of securities underlying outstanding options, warrants and rights plus the number of securities remaining available for future issuance under the registrant's existing equity compensation plans, and is often expressed as a percentage of the total number of outstanding securities.

[130] It may be difficult for investors to calculate the ''overhang'' of a registrant's equity compensation program because the number of securities available for future issuance under the registrant's plans may not be disclosed or apparent. Currently, a registrant submitting an equity compensation plan for security holder action need not provide any specific disclosure about its other equity compensation plans. Moreover, in its annual study on stock plan dilution, the Investor Responsibility Research Center found that approximately 22% of the companies surveyed did not disclose the number of shares available for future issuance under their employee stock plans. See the IRRC Dilution Study.

[131] While the full dilutive impact of these authorized but unissued securities cannot be assessed until derivative instruments have been granted and the prices for which the underlying securities may be issued can be compared to existing market values, this information, combined with knowledge of the minimum exercise price at which these instruments may be granted, may provide useful insight into the potential future economic consequences of the program.

[132] See, for example, the AA Letter, the AICPA Letter, the Letter dated May 22, 2001 from the New York State Bar Association and the PWC Letter.

[133] See the Letter dated April 9, 2001 from Lucent Technologies Inc.

[134] See the ABA Letter.

printing and distribution costs. We have revised the proposals to reduce and standardize the size of the required tabular disclosure. These revisions should ensure that registrants do not incur significant additional printing and postage charges to prepare and distribute their proxy or information statements to security holders. While in most instances, the required disclosure should not exceed one-third of a page, where a registrant has one or more non-security holder-approved stock option plans, the disclosure may be longer. These registrants may incur additional expense to print and distribute their proxy or information statement materials. While we do not expect these costs to be significant, we have estimated these amounts to be approximately $750 per registrant.[135]

For the reasons discussed above, we do not believe that the amendments will lead to significant compliance costs for registrants.[136] Notwithstanding the foregoing, we have adjusted our initial cost estimates to reflect the revisions made to the proposals. Because the size and scope of equity compensation programs vary among registrants, it is difficult to provide an accurate cost estimate with which all parties will agree; however, we estimate that each of the approximately 8,400 registrants[137] subject to the amendments will spend an average of approximately one to two hours each year and incur an average annual cost of approximately $393[138] to prepare the disclosure. Thus, the aggregate cost of the amendments is estimated to be approximately $3,300,000.

E. Conclusion

Based on the information provided in the comment letters and our own analysis, we believe that the amendments will enhance the quality of disclosure available to investors about registrants' equity compensation plans, thereby leading to better-informed investment and voting decisions. These benefits are difficult to quantify. We also believe that these benefits will justify the minimal costs of compliance.

V. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis, or FRFA, has been prepared in accordance with the Regulatory Flexibility Act.[139] This FRFA relates to rule amendments adopted under the Exchange Act that revise the disclosure requirements with respect to registrants' equity compensation plans. Specifically, the amendments revise Item 201 of Regulation S–B, Item 201 of Regulation S–K and Form 10–K, Form 10–KSB, Exchange Act Rule 14a–3 and Schedule 14A under the Exchange Act to require tabular disclosure of the number and weighted-average exercise price of all outstanding options, warrants and rights under a registrant's equity compensation plans, as well as the number of securities remaining available for future issuance under these plans and certain related information. Disclosure is to be made in two categories: plans that have been approved by security holders and plans that have not been approved by security holders. Registrants must include the table in their annual reports on Form 10–K or 10–KSB, as well as in their proxy or information statements in years when they are submitting a compensation plan for security holder action. Copies of most equity compensation plans will be required to be filed with us for public inspection.

A. Need for the Amendments

The increased use of equity compensation has raised investor concerns about the potential dilutive effect of a registrant's equity compensation plans, the absence of full disclosure to security holders about these plans and the adoption of many plans without the approval of security holders. These concerns may be especially acute for investors in small entities, which use equity compensation in order to attract and retain key employees and to preserve scarce cash resources.[140] The amendments enhance the quality of information available to investors about a registrant's equity compensation plans.

B. Significant Issues Raised by Public Comment

A summary of the Initial Regulatory Flexibility Analysis, or IRFA, appeared in the Proposing Release.[141] We requested comment on any aspect of the IRFA, including the number of small businesses that would be affected by the proposals, the nature of the impact, how to quantify the number of small entities that would be affected and how to quantify the impact of the proposals. We received no comment letters responding to that request.

C. Small Entities Subject to the Amendments

Exchange Act Rule 0–10[142] defines the term ''small business'' to be an issuer that, on the last day of its most recent fiscal year, has total assets of $5 million or less.[143] There are approximately 770 issuers that are subject to the reporting requirements of Section 13 of the Exchange Act that have assets of $5 million or less.[144] Only small businesses that have a reporting obligation under the Exchange Act *and* adopt or maintain an equity compensation plan will be subject to the amendments. We estimate that there are approximately 460 entities that have

[135] This estimate is based on the Letter dated April 9, 2001 from Lucent Technologies, Inc., in which the commenter estimated that providing four additional pages of disclosure to its over five million security holders would result in additional printing costs of $100,000 and additional mailing costs of $200,000. Assuming that the required disclosure consists of one additional page and that a registrant has 50,000 security holders, the registrant may incur additional costs of $750 to prepare and distribute the additional disclosure.

[136] Since all registrants are required to make the same disclosure, the amendments will impose the same dollar costs on each registrant. Accordingly, for small entities the relative burden of compliance will be higher than for large entities.

[137] This figure is based on our estimate that 60% of the actual number of registrants filing annual reports on Form 10–K or 10–KSB (14,022 registrants) maintain equity compensation plans. This estimate is made after a review of available survey data, which varies widely. For example, in its most recent study of the ''S&P Super 1,500'' (the combination of the S&P 500, the S&P MidCap 400 and the S&P SmallCap 600), the Investor Responsibility Research Center determined that, of the 1,157 companies examined, 1,142 (98.7%) awarded equity to some portion of their employees. See Investor Responsibility Research Center, *Potential Dilution—2000, The Potential Dilution from Stock Plans at the S&P Super 1,500 Companies* (2000). In contrast, a Pilot Survey conducted by the Bureau of Labor Statistics in 1999 determined that 22% of publicly-held companies offered stock options to their employees. This survey sampled 2,100 ''establishments,'' of which approximately 1 in 10 were publicly-held companies. See Bureau of Labor Statistics, *Pilot Survey on the Incidence of Stock Options in Private Industry in 1999,* (Oct. 11, 2000), available at *http://www.bls.gov/ncs/ocs/sp/ncnr0001.txt.*

[138] We arrived at this estimate by assuming that approximately 80% of these registrants will be required to provide the tabular disclosure only and 20% of these registrants will be required to describe the material features of their non-security holder-approved plans as well. See n. 90 above and the accompanying text. Thus, 80% of the registrants will incur an average annual outside counsel cost of $300 (80% of 8,400 x $300 = $2,016,000) while 20% will incur an average annual outside cost of $600 (20% of 8,400 x $600 = $1,008,000). In addition, we estimate that approximately 365 registrants with non-security holder-approved plans will incur additional printing and distribution costs of $750 each, or $273,750. See n. 135 above. The sum of these amounts averaged over 8,400 registrants equals $393.

[139] 5 U.S.C. § 603.

[140] A recent study of approximately 250 companies conducted by the National Center for Employee Ownership found that 55% of the respondents had less than 200 employees (with 17% having less than 31 employees) and that 55% of the respondents had less than $40 million in annual revenue (with 14% having annual revenues of $1.1 million or less). See National Center for Employee Ownership, *An Overview of How Companies are Granting Stock Options* (2001).

[141] See the Proposing Release at Section V.

[142] 17 CFR 240.0–10(c).

[143] A similar definition is provided under Securities Act Rule 157 [17 CFR 230.157].

[144] This estimate is based on filings with the Commission.

total assets of $5 million or less that meet this criteria.[145]

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The amendments impose new reporting requirements by requiring specific annual disclosure by all registrants, including ''small businesses,'' concerning their equity compensation plans in effect as of the end of the most recently completed fiscal year. Consequently, the amendments will increase the costs associated with the preparation of the disclosure included in annual reports on Form 10–K or 10–KSB and furnished to security holders in proxy and information statements. Specifically, the amendments require registrants to disclose the number and weighted-average exercise price of all outstanding options, warrants and rights under a registrant's equity compensation plans, as well as the number of securities remaining available for future issuance under these plans and certain related information. Disclosure is to be made in two categories: plans that have been approved by security holders and plans that have not been approved by security holders. Since this information can be derived from information that is readily available to registrants through the routine administration of their equity compensation programs, we do not expect these additional costs to be significant.

We do not anticipate that the amendments will impose any significant recordkeeping requirements in addition to those already required under the Exchange Act. The information to be disclosed can be derived from information that is readily available to registrants through the routine administration of their equity compensation programs. All registrants with equity compensation plans have various legal, financial reporting and other disclosure obligations that require maintenance of information regarding these plans similar to that covered by the amendments.

E. Agency Action To Minimize Effect on Small Entities

As required by Sections 603 and 604 of the Regulatory Flexibility Act, we have considered alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered several alternatives, including the following:

- Establishing different compliance and reporting requirements that take into account the resources of small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

Overall, the amendments are intended to assist investors in understanding a registrant's equity compensation policies and practices. The quality of information available about the potential dilutive effect of a registrant's equity compensation plans is relevant to investors in both small and large entities. Different compliance or reporting requirements for small entities are not appropriate because small entities may use equity compensation plans to a greater extent than large entities to preserve scarce cash resources.[146] In addition, it is not feasible to further clarify, consolidate or simplify the amendments for small entities because the amendments require only minimal information about a registrant's equity compensation plans. Because uniformity and comparability are important, especially where small entities have equity compensation plans, we do not propose to use performance standards to specify different requirements for small entities. Finally, we believe that the amendments should apply equally to all entities required to disclose information, in order to safeguard protection of all investors.

VI. Analysis of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[147] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule will have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. We have considered the amendments in light of the standards in Section 23(a)(2). We requested comment on any anti-competitive effects of the proposals. We received no comment letters responding to that request.

The amendments may have a disparate impact on registrants that use equity compensation extensively, such as smaller firms or registrants in certain industry sectors (such as high-technology companies), as compared to registrants with limited or no equity compensation programs.[148] Thus, we are sensitive to the concern that registrants with a greater compliance obligation will be placed at a competitive disadvantage. In addition, several commenters, while not specifically addressing this issue, did argue that the new disclosure would be duplicative of information currently required to be included in registrants' audited financial statements. In response to these concerns, we have revised the proposals to eliminate redundant requirements and to streamline the compliance process. Because these changes should enable registrants to keep compliance costs low, we do not believe that the amendments will impose a significantly disproportionate cost on smaller firms or high-technology companies.

Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act[149] require us, when engaging in rulemaking requiring us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. We have considered the amendments in light of the standards in these provisions. We requested comment on how the proposals would affect efficiency, competition and capital formation. We received no comment letters responding to that request.

It is widely believed that equity compensation, particularly instruments such as stock options, can be used to align the interests of employees and security holders, thereby promoting effective corporate governance.[150] Because an equity compensation plan may necessarily have an unintended dilutive effect on the existing ownership interests, however, it is important that the plan be closely monitored to ensure that its cost is commensurate with its benefit to investors. The amendments are intended to enhance the quality of disclosure about registrants' equity compensation programs that is available

[145] This figure is based on our estimate that 60% of the registrants that file an annual report on either Form 10–K or 10–KSB maintain equity compensation plans and will be required to provide the new tabular disclosure. See n. 87 above.

[146] See n. 140 above.

[147] 15 U.S.C. 78w(a).

[148] See n. 140 above.

[149] 15 U.S.C. § 77b(b) and 78c(f).

[150] See, for example, the American Benefits Council, *Taking Stock in Employee Benefits: The Democratization of Broad-Based Stock Plans* (Feb. 2001), at 2–3.

to investors. Increasing the transparency of these programs should result in better monitoring by investors. This should result in better corporate governance, thereby increasing the efficiency of the organization. This should promote capital formation.

VII. Statutory Authority

The amendments contained in this release are being adopted under the authority set forth in Sections 3(b) and 19(a) of the Securities Act and Sections 12, 13, 14(a), 15(d) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 228, 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of Rule Amendments

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 1. The general authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll,* 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11, unless otherwise noted.

■ 2. Section 228.201 is amended by adding paragraph (d) before the *Instruction* to read as follows:

§ 228.201 (Item 201) Market for Common Equity and Related Stockholder Matters.

* * * * *

(d) *Securities authorized for issuance under equity compensation plans.* (1) In the following tabular format, provide the information specified in paragraph (d)(2) of this Item as of the end of the most recently completed fiscal year with respect to compensation plans (including individual compensation arrangements) under which equity securities of the small business issuer are authorized for issuance, aggregated as follows:

(i) All compensation plans previously approved by security holders; and

(ii) All compensation plans not previously approved by security holders.

EQUITY COMPENSATION PLAN INFORMATION

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
	(a)	(b)	(c)
Equity compensation plans approved by security holders			
Equity compensation plans not approved by security holders			
Total			

(2) The table shall include the following information as of the end of the most recently completed fiscal year for each category of equity compensation plan described in paragraph (d)(1) of this Item:

(i) The number of securities to be issued upon the exercise of outstanding options, warrants and rights (column (a));

(ii) The weighted-average exercise price of the outstanding options, warrants and rights disclosed pursuant to paragraph (d)(2)(i) of this Item (column (b)); and

(iii) Other than securities to be issued upon the exercise of the outstanding options, warrants and rights disclosed in paragraph (d)(2)(i) of this Item, the number of securities remaining available for future issuance under the plan (column (c)).

(3) For each compensation plan under which equity securities of the small business issuer are authorized for issuance that was adopted without the approval of security holders, describe briefly, in narrative form, the material features of the plan.

Instructions to Paragraph (d).

1. Disclosure shall be provided with respect to any compensation plan and individual compensation arrangement of the small business issuer (or parent, subsidiary or affiliate of the small business issuer) under which equity securities of the small business issuer are authorized for issuance to employees or non-employees (such as directors, consultants, advisors, vendors, customers, suppliers or lenders) in exchange for consideration in the form of goods or services as described in Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation,* or any successor standard. No disclosure is required with respect to:

a. Any plan, contract or arrangement for the issuance of warrants or rights to all security holders of the small business issuer as such on a pro rata basis (such as a stock rights offering) or

b. Any employee benefit plan that is intended to meet the qualification requirements of Section 401(a) of the Internal Revenue Code (26 U.S.C. 401(a)).

2. For purposes of this paragraph, an ''individual compensation arrangement'' includes, but is not limited to, the following: a written compensation contract within the meaning of ''employee benefit plan'' under § 230.405 of this chapter and a plan (whether or not set forth in any formal document) applicable to one person as provided under Item 402(a)(7)(ii) of Regulation S–B (§ 228.402(a)(7)(ii)).

3. If more than one class of equity security is issued under its equity compensation plans, a small business issuer should aggregate plan information for each class of security.

4. A small business issuer may aggregate information regarding individual compensation arrangements with the plan information required under paragraph (d)(1)(i) and (ii) of this item, as applicable.

5. A small business issuer may aggregate information regarding a compensation plan assumed in connection with a merger, consolidation or other acquisition transaction pursuant to which the small business issuer may make subsequent grants or awards of its equity securities with the plan information required under paragraph (d)(1)(i) and (ii) of this Item, as applicable. A small business issuer shall disclose on an aggregated basis in a footnote to the table the information required under paragraph (d)(2)(i) and (ii) of this Item with respect to any individual options, warrants or rights assumed in connection with a merger, consolidation or other acquisition transaction.

6. To the extent that the number of securities remaining available for future issuance disclosed in column (c) includes securities available for future issuance under any compensation plan or individual compensation arrangement other than upon the exercise of an option, warrant or right, disclose the number of securities and type of

plan separately for each such plan in a footnote to the table.

7. If the description of an equity compensation plan set forth in a small business issuer's financial statements contains the disclosure required by paragraph (d)(3) of this Item, a cross-reference to such description will satisfy the requirements of paragraph (d)(3) of this Item.

8. If an equity compensation plan contains a formula for calculating the number of securities available for issuance under the plan, including, without limitation, a formula that automatically increases the number of securities available for issuance by a percentage of the number of outstanding securities of the small business issuer, a description of this formula shall be disclosed in a footnote to the table.

9. Except where it is part of a document that is incorporated by reference into a prospectus, the information required by this paragraph need not be provided in any registration statement filed under the Securities Act.

* * * * *

■ 3. Section 228.601 is amended by redesignating paragraph (b)(10)(ii)(B) as paragraph (b)(10)(ii)(C) and by adding new paragraph (b)(10)(ii)(B) to read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

(b) *Description of Exhibits* * * *

(10) *Material Contracts* * * *

(ii) * * *

(B) Any compensatory plan, contract or arrangement adopted without the approval of security holders pursuant to which equity may be awarded, including, but not limited to, options, warrants or rights (or if not set forth in any formal document, a written description thereof), in which any employee (whether or not an executive officer of the small business issuer) participates shall be filed unless immaterial in amount or significance. A compensation plan assumed by a small business issuer in connection with a merger, consolidation or other acquisition transaction pursuant to which the small business issuer may make further grants or awards of its equity securities shall be considered a compensation plan of the small business issuer for purposes of the preceding sentence.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 4. The general authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), and 80b–11, unless otherwise noted.

* * * * *

■ 5. The authority citation following § 229.201 is removed.

■ 6. Section 229.201 is amended by adding paragraph (d) before the *Instructions to Item 201* to read as follows:

§ 229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.

* * * * *

(d) *Securities authorized for issuance under equity compensation plans.* (1) In the following tabular format, provide the information specified in paragraph (d)(2) of this Item as of the end of the most recently completed fiscal year with respect to compensation plans (including individual compensation arrangements) under which equity securities of the registrant are authorized for issuance, aggregated as follows:

(i) All compensation plans previously approved by security holders; and

(ii) All compensation plans not previously approved by security holders.

EQUITY COMPENSATION PLAN INFORMATION

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
	(a)	(b)	(c)
Equity compensation plans approved by security holders			
Equity compensation plans not approved by security holders			
Total.			

(2) The table shall include the following information as of the end of the most recently completed fiscal year for each category of equity compensation plan described in paragraph (d)(1) of this Item:

(i) The number of securities to be issued upon the exercise of outstanding options, warrants and rights (column (a));

(ii) The weighted-average exercise price of the outstanding options, warrants and rights disclosed pursuant to paragraph (d)(2)(i) of this Item (column (b)); and

(iii) Other than securities to be issued upon the exercise of the outstanding options, warrants and rights disclosed in paragraph (d)(2)(i) of this Item, the number of securities remaining available for future issuance under the plan (column (c)).

(3) For each compensation plan under which equity securities of the registrant are authorized for issuance that was adopted without the approval of security holders, describe briefly, in narrative form, the material features of the plan.

Instructions to Paragraph (d).

1. Disclosure shall be provided with respect to any compensation plan and individual compensation arrangement of the registrant (or parent, subsidiary or affiliate of the registrant) under which equity securities of the registrant are authorized for issuance to employees or non-employees (such as directors, consultants, advisors, vendors, customers, suppliers or lenders) in exchange for consideration in the form of goods or services as described in Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation,* or any successor standard. No disclosure is required with respect to:

a. Any plan, contract or arrangement for the issuance of warrants or rights to all security holders of the registrant as such on

a pro rata basis (such as a stock rights offering) or

b. Any employee benefit plan that is intended to meet the qualification requirements of Section 401(a) of the Internal Revenue Code (26 U.S.C. 401(a)).

2. For purposes of this paragraph, an ''individual compensation arrangement'' includes, but is not limited to, the following: a written compensation contract within the meaning of ''employee benefit plan'' under § 230.405 of this chapter and a plan (whether or not set forth in any formal document) applicable to one person as provided under Item 402(a)(7)(ii) of Regulation S–K (§ 229.402(a)(7)(ii)).

3. If more than one class of equity security is issued under its equity compensation plans, a registrant should aggregate plan information for each class of security.

4. A registrant may aggregate information regarding individual compensation arrangements with the plan information required under paragraph (d)(1)(i) and (ii) of this Item, as applicable.

5. A registrant may aggregate information regarding a compensation plan assumed in connection with a merger, consolidation or other acquisition transaction pursuant to which the registrant may make subsequent grants or awards of its equity securities with the plan information required under paragraph (d)(1)(i) and (ii) of this Item, as applicable. A registrant shall disclose on an aggregated basis in a footnote to the table the information required under paragraph (d)(2)(i) and (ii) of this Item with respect to any individual options, warrants or rights assumed in connection with a merger, consolidation or other acquisition transaction.

6. To the extent that the number of securities remaining available for future issuance disclosed in column (c) includes securities available for future issuance under any compensation plan or individual compensation arrangement other than upon the exercise of an option, warrant or right, disclose the number of securities and type of plan separately for each such plan in a footnote to the table.

7. If the description of an equity compensation plan set forth in a registrant's financial statements contains the disclosure required by paragraph (d)(3) of this Item, a cross-reference to such description will satisfy the requirements of paragraph (d)(3) of this Item.

8. If an equity compensation plan contains a formula for calculating the number of securities available for issuance under the plan, including, without limitation, a formula that automatically increases the number of securities available for issuance by a percentage of the number of outstanding securities of the registrant, a description of this formula shall be disclosed in a footnote to the table.

9. Except where it is part of a document that is incorporated by reference into a prospectus, the information required by this paragraph need not be provided in any registration statement filed under the Securities Act.

* * * * *

■ 7. Section 229.601 is amended by redesignating paragraph (b)(10)(iii)(B) as paragraph (b)(10)(iii)(C) and by adding new paragraph (b)(10)(iii)(B) to read as follows:

§ 229. 601 (Item 601) Exhibits.

* * * * *

(b) *Description of Exhibits* * * *

(10) *Material Contracts* * * *

(iii) * * *

(B) Any compensatory plan, contract or arrangement adopted without the approval of security holders pursuant to which equity may be awarded, including, but not limited to, options, warrants or rights (or if not set forth in any formal document, a written description thereof), in which any employee (whether or not an executive officer of the registrant) participates shall be filed unless immaterial in amount or significance. A compensation plan assumed by a registrant in connection with a merger, consolidation or other acquisition transaction pursuant to which the registrant may make further grants or awards of its equity securities shall be considered a compensation plan of the registrant for purposes of the preceding sentence.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 8. The general authority citation for Part 240 is revised to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

■ 9. The authority citation following § 240.14a–3 is removed.

■ 10. Section 240.14a–3 is amended by revising paragraph (b)(9) to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

(9) The report shall contain the market price of and dividends on the registrant's common equity and related security holder matters required by Item 201(a), (b) and (c) of Regulation S–K (§ 229.201(a), (b) and (c) of this chapter).

* * * * *

■ 11. In § 240.14a–101, amend Item 10 of Schedule 14A by adding paragraph (c) before the undesignated heading *Instructions* and revise Item 14(d)(4) of Schedule 14A to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 10. Compensation Plans. * * *

* * * * *

(c) *Information regarding plans and other arrangements not subject to security holder action.* Furnish the information required by Item 201(d) of Regulation S–K (§ 229.201(d) of this chapter).

Instructions to paragraph (c).

1. If action is to be taken as described in paragraph (a) of this Item with respect to the approval of a new compensation plan under which equity securities of the registrant are authorized for issuance, information about the plan shall be disclosed as required under paragraphs (a) and (b) of this Item and shall not be included in the disclosure required by Item 201(d) of Regulation S–K (§ 229.201(d) of this chapter). If action is to be taken as described in paragraph (a) of this Item with respect to the amendment or modification of an existing plan under which equity securities of the registrant are authorized for issuance, the registrant shall include information about securities previously authorized for issuance under the plan (including any outstanding options, warrants and rights previously granted pursuant to the plan and any securities remaining available for future issuance under the plan) in the disclosure required by Item 201(d) of Regulation S–K (§ 229.201(d) of this chapter). Any additional securities that are the subject of the amendments or modification of the existing plan shall be disclosed as required under paragraphs (a) and (b) of this Item and shall not be included in the Item 201(d) disclosure.

* * * * *

Item 14. Mergers, consolidations, acquisitions and similar matters. * * *

* * * * *

(d) *Information about parties to the transaction: registered investment companies and business development companies.* * * *

* * * * *

(4) Information required by Item 201(a), (b) and (c) of Regulation S–K (§ 229.201(a), (b) and (c) of this chapter), market price of and dividends on the registrant's common equity and related stockholder matters;

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 12. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

* * * * *

■ 13. By amending Form 10–K (referenced in § 249.310) by revising Item 12 of Part III to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Part III

* * * * *

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Furnish the information required by Item 201(d) of Regulation S–K (§ 229.201(d) of this chapter) and by Item 403 of Regulation S–K (§ 229.403 of this chapter).

* * * * *

■ 12. By amending Form 10–KSB (referenced in § 249.310b) by revising Item 11 of Part III to read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

Part III

* * * * *

Item 11. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Furnish the information required by Item 201(d) of Regulation S–B and by Item 403 of Regulation S–B.

* * * * *

By the Commission.

Dated: December 21, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–32078 Filed 12–31–01; 8:45 am]

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Federal Register

Wednesday,
January 2, 2002

Part VI

Securities and Exchange Commission

17 CFR Parts 228, 229, 240, and 249
Disclosure of Equity Compensation Plan Information; Final Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 240 and 249

[Release Nos. 33–8048, 34–45189; File No. S7–04–01]

RIN 3235–AI01

Disclosure of Equity Compensation Plan Information

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: We are adopting amendments to the Securities Exchange Act of 1934 disclosure requirements applicable to annual reports filed on Forms 10–K and 10–KSB and to proxy and information statements. The amendments will enhance disclosure of the number of outstanding options, warrants and rights granted by registrants to participants in equity compensation plans, as well as the number of securities remaining available for future issuance under these plans. The amendments require registrants to provide this information separately for equity compensation plans that have not been approved by their security holders, and to file with us copies of these plans unless immaterial in amount of significance.

DATES: Effective Date: February 1, 2002. *Compliance Dates:* Registrants must comply with the new disclosure requirements for their annual reports on Forms 10–K or 10–KSB to be filed for fiscal years ending on or after March 15, 2002 and for proxy and information statements for meetings of, or action by, security holders occurring on or after June 15, 2002. Registrants voluntarily may comply with the new disclosure requirements before the compliance dates.

Comments: Comments on the ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 should be received by February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mark A. Borges, Special Counsel, Office of Rulemaking, Division of Corporation Finance, by telephone at (202) 942–2910, or in writing at the Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Items 201 [1] and 601 [2] of Regulation S–B,[3] Items 201 [4] and 601 [5] of Regulation S–K [6] and Form 10–K, [7] Form 10–KSB [8] and Schedule 14A [9] under the Securities Exchange Act of 1934.[10] Schedule 14C [11] under the Exchange Act also is affected by the amendments.[12]

I. Introduction

As the use of equity compensation has increased during the last decade,[13] so have concerns about its impact on registrants and their security holders.[14] Equity compensation grants and awards may result in a significant reallocation of ownership between existing security holders and management and employees.[15] Our current rules do not require disclosure in a single location of the total number of securities that a registrant has remaining available for issuance under all of its equity compensation plans. Also, because these plans may be implemented without the approval of security holders, it is possible that investors may not be able to determine the total size of a registrant's equity compensation program.

In January 2001, we proposed amendments to our equity compensation disclosure rules, where our intent was to furnish investors with a more understandable presentation of a registrant's equity compensation program.[16] We received 31 comment letters in response to the proposals.[17] While a majority of commenters supported the proposals, several questioned the need for disclosure that was, in their view, substantially equivalent to disclosure already required in registrants' audited financial statements. In addition, many of the supportive commenters offered suggestions for refining the proposals to better accomplish the goal of assuring that all material information about a registrant's equity compensation program is fully and clearly disclosed. We have made a number of changes to the proposals in response to these comments. These changes are discussed in Section II of this release.

As a result of today's amendments, registrants must include a new table in their annual reports on Form 10–K,[18] as well as in their proxy statements [19] in years when they are submitting a compensation plan for security holder action. This table requires information about two categories of equity compensation plans: plans that have been approved by security holders and plans that have not been approved by security holders. With respect to each category, a registrant must disclose the number of securities to be issued upon the exercise, and the weighted-average exercise price, of all outstanding options, warrants and rights, as well as the number of securities remaining available for future issuance under the registrant's equity compensation plans.[20]

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[1] 17 CFR 228.201.

[2] 17 CFR 228.601.

[3] 17 CFR 228.10 *et seq.*

[4] 17 CFR 229.201.

[5] 17 CFR 229.601.

[6] 17 CFR 229.10 *et seq.*

[7] 17 CFR 249.310.

[8] 17 CFR 249.310b.

[9] 17 CFR 240.14a–101.

[10] 15 U.S.C. § 78a *et seq.*

[11] 17 CFR 240.14c–101.

[12] Item 1 of Schedule 14C requires that a registrant yfurnish the information called for by all of the items of Schedule 14A (other than Items 1(c), 2, 4 and 5) which would be applicable to any matter to be acted upon at the meeting if proxies were to be solicited in connection with the meeting.

[13] A study of stock-based pay practices at the nation's 200 largest corporations indicates that these companies allocated 15.2% of outstanding shares (calculated on a fully-diluted basis) for management and employee equity incentives in 2000, compared to only 6.9% in 1989. See Pearl Meyers & Partners, Inc., *2000 Equity Stake, Study of Management Equity Participation in the Top 200 Corporations* (2000).

[14] See Eric D. Roiter, *The NYSE Wrestles with Shareholder Approval of Stock Option Plans*, Corp. Gov. Adv., Vol. 8, No. 1 (Jan./Feb. 2000), at 1. See also, for example, Justin Fox, *The Amazing Stock Option Sleight of Hand*, Fortune, June 25, 2001, at 86.

[15] In its most recent study, the Investor Responsibility Research Center found that the average potential dilution for the 1,500 companies in the ''S&P Super 1,500'' (the combination of the S&P 500, the S&P MidCap 400 and the S&P SmallCap 600) was 14.6% in 2000, compared to 11.6% in 1997; an increase of approximately 26%. The increase was even greater for S&P 500 companies, with average potential dilution rising to 13.1% in 2000, compared to 9.2% in 1995. See Investor Responsibility Research Center, *Potential Dilution—2000, The Potential Dilution from Stock Plans at the S&P Super 1,500 Companies* (2000) (the ''IRRC Dilution Study'').

[16] The amendments were proposed in Release No. 33–7944 (Jan. 26, 2001) [66 FR 8732] (the ''Proposing Release'').

[17] The commenters included 11 individual and institutional investors, eight registrants and registrant associations (one registrant submitted two letters), one self-regulatory organization and 10 members of the executive compensation consulting, accounting and legal communities. These comment letters and a summary of comments prepared by our staff are available for public inspection and copying in our Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549, in File No. S7–04–01. Public comments submitted electronically and the summary of comments are available on our Web site *http://www.sec.gov*.

[18] The discussion of Form 10–K in this release also includes Form 10–KSB.

[19] The discussion of proxy statements in this release also includes Schedule 14C information statements.

[20] To help investors better understand equity compensation, our Office of Investor Education and Assistance will create educational materials about the available disclosure on equity compensation programs (including the information available in financial statements).

II. Discussion of Amendments

A. Content of Disclosure

1. Required Disclosure

Under the original proposals described in the Proposing Release, registrants were to disclose in tabular form several categories of information about their equity compensation plans, including the number of securities authorized for issuance under each plan, the number of securities issued, plus the number of securities to be issued upon the exercise of outstanding options, warrants or rights granted, under each plan during the last fiscal year, the number of securities to be issued upon the exercise of outstanding options, warrants or rights granted other than in the last fiscal year and the number of securities remaining available for future issuance under each plan. The proposals would have required registrants to list each plan separately in the table. We also sought comment as to whether any additional categories of information should be included in the table.

In response to concerns that the proposals would be costly and burdensome to implement and duplicative of some of the information required in registrants' financial statements, we have eliminated the first two proposed categories of disclosure. We have made a number of other changes as well, including a change that permits registrants to present the required information on an aggregated basis. These changes are discussed in detail below.

In addition to comments suggesting that we scale back the proposed disclosure, we also received comments citing the need for additional types of disclosure not originally proposed. For example, several commenters suggested that we add a column to the proposed table showing the weighted-average exercise price of outstanding options, warrants and rights.[21] These commenters asserted that investors need this information to assess the dilutive effect of a registrant's equity compensation program.[22] To enable investors to better understand dilution and to enhance the visibility of exercise price information, we have added a column to the table requiring disclosure of the weighted-average exercise price of all outstanding compensatory options, warrants and rights.[23]

As adopted, the amendments require a registrant to provide investors with the following tabular disclosure:

EQUITY COMPENSATION PLAN INFORMATION

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
	(a)	(b)	(c)
Equity compensation plans approved by security holders			
Equity compensation plans not approved by security holders			
Total			

Registrants must provide the disclosure with respect to any equity compensation plan[24] in effect[25] as of the end of the registrant's last completed fiscal year that provides for the award of a registrant's securities or the grant of options, warrants or rights to purchase the registrant's securities to employees of the registrant or its parent, subsidiary or affiliated companies, or to any other person.[26] The disclosure also is to be provided without regard to whether the securities to be issued under the equity compensation plan are authorized but unissued securities of the registrant or reacquired shares.

2. Aggregated Disclosure

Several commenters suggested that we permit registrants to provide the required tabular disclosure on an aggregate, rather than a plan-by-plan, basis.[27] These commenters indicated that it would be unduly burdensome for many registrants if plans had to be listed separately in the table.[28] Another commenter expressed similar concerns if registrants were required to itemize plans assumed as the result of mergers, consolidations or other acquisition transactions.[29] We are persuaded that plan-by-plan disclosure may be

[21] See, for example, the Letter dated March 26, 2001 from the Council of Institutional Investors (the ''CII Letter''), the Letter dated April 24, 2001 from the Association for Investment Management and Research and the Letter dated April 16, 2001 from the Association of the Bar of the City of New York (the ''NYC Bar Letter'').

[22] While the impact of outstanding options, warrants and rights is contained in the presentation of diluted earnings-per-share required by Statement of Financial Accounting Standards No. 128, *Earnings-Per-Share* (Feb. 1997) (''SFAS 128''), this disclosure does not necessarily isolate ''compensatory'' instruments. Typically, the diluted earnings-per-share figure combines the dilutive effect of compensatory options, warrants and rights with that of other outstanding convertible securities.

[23] See new Item 201(d)(2)(ii) of Regulation S–B [17 CFR 228.201(d)(2)(ii)] and new Item 201(d)(2)(ii) of Regulation S–K [17 CFR 229.201(d)(2)(ii)]. This weighted-average exercise price information may be different from that contained in a registrant's financial statements as required by Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation* (Oct. 1995) (''SFAS 123'') because the information includes grants and awards to non-employees while the information required by SFAS 123 may not. See n. 55 below.

[24] This includes any equity compensation plan that provides for grants and awards to employees or non-employees in exchange for consideration in the form of goods or services as described in SFAS 123.

[25] For purposes of the amendments, we consider an equity compensation plan to be in effect as long as securities remain available for future issuance under the plan, or as long as options, warrants or rights previously granted under the plan remain outstanding.

[26] Disclosure is required without regard to whether participants are employees (including officers) or non-employees (such as directors, consultants, advisors, vendors, customers, suppliers or lenders).

[27] See, for example, the Letter dated May 7, 2001 from the American Bar Association (the ''ABA Letter''), the Letter dated April 2, 2001 from Lucent Technologies Inc. and the Letter dated May 22, 2001 from the New York State Bar Association (the ''NY State Bar Letter'').

[28] One commenter estimated that, based upon the number of equity compensation plans it administers, compliance could cost an additional $300,000 annually for printing and distribution. See the Letter dated April 9, 2001 from Lucent Technologies Inc. (the ''Second Lucent Letter'').

[29] See the Letter dated February 27, 2001 from Intel Corporation (the ''Intel Letter'').

[30] In addition, information on the number and identity of a registrant's equity compensation plans should be available in the footnotes to the registrant's financial statements as part of its required SFAS 123 disclosure. See paragraph 46 of SFAS 123.

burdensome for many registrants.[30] Accordingly, we have revised the table to permit registrants to aggregate disclosure in two general categories:

- equity compensation plans approved by security holders; and
- equity compensation plans not approved by security holders.[31]

In the Proposing Release, we sought comment as to whether, when a registrant is submitting a new or existing equity compensation plan for security holder action, the required proxy statement disclosure should include that plan.[32] Several commenters suggested that we expand the table to include information about an existing plan upon which further action is being taken (for example, where a registrant is seeking the approval of security holders for an increase in the number of securities authorized for issuance under the plan).[33] These commenters indicated that, absent this requirement, a registrant amending an existing equity compensation plan otherwise might avoid disclosing information about the securities previously authorized for issuance under the plan. We are persuaded that registrants should include this information in the table.

Accordingly, where action is being taken to amend an existing equity compensation plan, the table should include information about the securities previously authorized for issuance under the plan; that is, the number of securities to be issued upon the exercise, and the weighted-average exercise price, of outstanding options, warrants and rights previously granted under the plan and the number of securities remaining available for future issuance under the plan.[34] A registrant should not include in the table the number of additional securities that are the subject of the plan amendment for which the registrant is seeking security holder approval.

3. Individual Arrangements and Assumed Plans

In the Proposing Release, we sought comment as to whether aggregated disclosure of individual equity compensation arrangements[35] was appropriate. We also asked whether aggregated disclosure should be permitted where a registrant had assumed an equity compensation plan in connection with a merger, consolidation or other acquisition transaction. Several commenters supported aggregated disclosure of individual arrangements,[36] and one commenter was in favor of aggregating the disclosure of individual arrangements with the disclosure of equity compensation plans.[37] Other commenters favored permitting aggregated disclosure of assumed plans.[38] Consistent with the concept of aggregated plan disclosure, we have revised the table to permit registrants to combine information about individual arrangements[39] and assumed plans (where further grants and awards can be made under these plans)[40] with information about other plans, all in the appropriate disclosure category.

4. Non-Security Holder-Approved Plans

As adopted, the amendments require a registrant to identify and describe briefly, in narrative form, the material features of each equity compensation plan in effect as of the end of the last completed fiscal year that was adopted without security holder approval.[41] While several commenters supported this requirement,[42] one commenter suggested that we permit registrants to cross-reference the portion of their required SFAS 123 disclosure containing descriptions of their non-security holder-approved plans to satisfy this requirement.[43] Because it streamlines compliance and ensures that investors have annual[44] access to this information, we are permitting registrants to satisfy the disclosure requirement in this manner.[45] The cross-reference should identify the specific plan or plans in the required SFAS 123 disclosure that have not been approved by security holders. In view of this change, we have eliminated the provision that would have permitted a registrant to satisfy this disclosure requirement by simply identifying the filing containing a narrative description of the plan in the years following the initial disclosure.

5. Foreign Registrants

Some commenters inquired about the applicability of the proposals to foreign registrants. Historically, we have applied a more flexible standard to foreign registrants than domestic registrants in the area of executive compensation disclosure. For example, foreign registrants need not disclose executive compensation information on an individual basis unless they disclose it in that manner under home country law or otherwise.[46] We do not find it necessary to vary from our historical treatment of executive compensation disclosure for foreign registrants,[47] and,

[31] See new Item 201(d)(1) of Regulation S–B [17 CFR 228.201(d)(1)] and new Item 201(d)(1) of Regulation S–K [17 CFR 229.201(d)(1)].

[32] These plans otherwise are subject to the disclosure requirements of Item 10 of Schedule 14A. Item 10 requires a description of the material features of, and tabular disclosure of the benefits receivable or allocable under, the plan being acted upon, as well as additional information regarding specific types of plans.

[33] See, for example, the CII Letter, the Letter dated March 28, 2001 from the State of Wisconsin Investment Board (the ''SWIB Letter'') and the Letter dated March 29, 2001 from the Teachers Insurance and Annuity Association—College Retirement Equities Fund (the ''TIAA-CREF Letter'').

[34] See Instruction 1 to new Item 10(c) of Schedule 14A.

[35] For these purposes, an individual equity compensation arrangement includes a ''plan'' for a single person as defined by Item 402(a)(7)(ii) of Regulation S–K [17 CFR 229.402(a)(7)(ii)] (''A plan may be applicable to one person.''), as well as an individual ''written compensation contract'' (see, for example, the Securities Act Rule 405 [17 CFR 230.405] definition of the term ''employee benefit plan'').

[36] See, for example, the NY State Bar Letter and the TIAA–CREF letter.

[37] See the ABA Letter.

[38] See the Intel Letter, the Letter dated August 17, 2001 from Leonard S. Stein and the Letter dated August 26, 2001 from Hendrick Vater.

[39] See Instruction 4 to new Item 201(d) of Regulation S–B [17 CFR 228.201(d)] and Instruction 4 to new Item 201(d) of Regulation S–K [17 CFR 229.201(d)].

[40] See Instruction 5 to new Item 201(d) of Regulation S–B and Instruction 5 to new Item 201(d) of Regulation S–K. In the case of individual options, warrants and rights assumed in connection with a merger, consolidation or other acquisition transaction, registrants should disclose the number of securities underlying the assumed options, warrants and rights and the related weighted-average exercise price information on an aggregated basis in a footnote to the table. *Id.*

[41] See new Item 201(d)(3) of Regulation S–B [17 CFR 228.201(d)(3)] and new Item 201(d)(3) of Regulation S–K [17 CFR 229.201(d)(3)].

[42] See, for example, the CII Letter, the Letter dated April 2, 2001 from the Investment Company Institute and the TIAA–CREF Letter.

[43] See the NYC Bar Letter. Similar cross-referencing is permitted under Item 101(b) (financial information about segments) and Item 101(d) (financial information about geographic areas) of Regulation S–K [17 CFR 229.101(b) and (d)].

[44] As originally proposed, the plan description would have been provided only once—following the year of adoption. The Proposing Release contemplated that, in subsequent years, registrants simply would identify the prior filing containing the plan description. Since SFAS 123 requires plan descriptions to be provided annually, the information will be available each year.

[45] See Instruction 7 to new Item 201(d) of Regulation S–B and Instruction 7 to new Item 201(d) of Regulation S–K. Paragraph 46 of SFAS 123 requires a description of each stock-based compensation plan, including the general terms of awards under the plan, such as vesting requirements, the maximum term of options granted and the number of shares authorized for grants of options or other equity instruments. See also paragraph 362 of SFAS 123. If the SFAS 123 plan description does not contain all of the material features of the plan, cross-referencing is not permitted.

[46] See Item 6.B of Form 20–F [17 CFR 249.220f]. Item 6.B requires disclosure of compensation information about a foreign private issuer's directors and senior management on an aggregated basis, including the amount of compensation paid and benefits in kind granted.

[47] Item 6.E.2 of Form 20–F requires a foreign private issuer to ''describe any arrangements for involving the employees in the capital of the

thus, we do not extend the amendments to foreign registrants at this time.[48]

B. Relationship to Accounting Disclosure

We have made significant changes to the proposals in response to arguments by several commenters that the current accounting literature provides for adequate disclosure about stock-based compensation.[49] We agree that we should strive to minimize redundant disclosure under generally accepted accounting principles and our rules, where practical. Accordingly, we have revised the proposals and will not require disclosure of

- The number of securities authorized for issuance under each equity compensation plan; [50] and
- The number of securities issued, plus the number of securities to be issued upon the exercise of outstanding options, warrants or rights granted, under each plan during the last fiscal year.[51]

The revised table will provide useful information to investors that is not always readily available in a registrant's financial statements.[52] This includes

- An indication of whether an equity compensation plan has been approved by security holders; [53]
- The total number of securities available for future issuance under a registrant's equity compensation program; [54] and
- The number of options and other securities granted or awarded to non-employees for compensatory purposes.[55]

Because this information may be important to investors in making informed voting and investment decisions, we believe it is appropriate to require all registrants subject to Exchange Act reporting to disclose it regularly.

Even where information, such as the number of securities to be issued upon the exercise, and the weighted-average exercise price, of outstanding options, warrants and rights, otherwise is available, it is not transparent to investors.[56] The amendments enhance the accessibility of this information, thereby making it easier for investors to assess the impact of a registrant's equity compensation policies and practices. Moreover, the amendments present the information in categories—plans that have been approved by security holders and plans that have not been approved by security holders—that investors have requested.[57]

The following table reflects the current relevant SFAS 123 disclosure requirements for stock-based compensation [58] and the new disclosure required by the amendments being adopted today, as adjusted to minimize redundancy between the two.

Equity compensation disclosure Item	Required by SFAS 123	Required by Item 201	Required by Item 601	Location of disclosure (financial statements/form 10-K/proxy by statement)
Description of general terms of each plan	Yes (¶ 46)	No	No	Financial Statements.
Number of securities authorized for grants of options or other equity instruments.	Yes (¶ 46)	No	No	Financial Statements.
Number and weighted-average exercise price of:				
Options outstanding at beginning of year	Yes (¶ 47a)	No	No	Financial Statements.
Options outstanding at end of year	Yes (¶ 47a)	Yes*	No	Financial Statements/Form 10–K/ Proxy Statement.**
Options exercisable at end of year	Yes (¶ 47a)	No	No	Financial Statements.
Options granted during year	Yes (¶ 47a)	No	No	Financial Statements.
Options exercised during year	Yes (¶ 47a)	No	No	Financial Statements.
Options forfeited during year	Yes (¶ 47a)	No	No	Financial Statements.
Options expired during year	Yes (¶ 47a)	No	No	Financial Statements.

company, including any arrangement that involves the issue or grant of options or shares or securities of the company.''

[48] In addition, while the use of equity compensation by foreign companies is increasing, it still trails use by U.S. companies. See Towers Perrin, *Stock Options Around the World* (2001).

[49] See the Letter dated April 2, 2001 from Arthur Andersen LLP, the Letter dated April 17, 2001 from the American Institute of Certified Public Accountants, the Letter dated March 29, 2001 from Emerson Electric Co., the Letter dated March 26, 2001 from the Institute of Management Accountants, the Letter dated April 12, 2001 from Microsoft Corporation, the Letter dated April 2, 2001 from PricewaterhouseCoopers LLP, the NY State Bar Letter and the Letter dated March 30, 2001 from Verizon Communications. These commenters also pointed out that duplicative disclosure is inconsistent with initiatives that we jointly have undertaken with the accounting profession to simplify disclosure and eliminate redundancies in financial reporting. See FASB Business Reporting Research Project, *Report of GAAP–SEC Disclosure Requirements Working Group* (2001), available at *http://www.rarc.rutgers.edu/fasb/brrp/BRRP3pl.PDF.*

[50] This information is required by paragraph 46 of SFAS 123.

[51] This information is required by paragraphs 47(a) and (c) of SFAS 123.

[52] See *Report of the New York Stock Exchange Special Task Force on Stockholder Approval Policy* (Oct. 1999) (the ''NYSE Task Force Report''), at 14, available at *http://www.nyse.com/pdfs/policy.pdf.*

[53] While SFAS 123 requires an entity to provide a description of each stock-based compensation plan, these descriptions need not indicate whether a plan has been approved by security holders. See paragraphs 46 and 362 of SFAS 123.

[54] Paragraph 46 of SFAS 123 provides for disclosure of the number of shares authorized for grants of options or other equity instruments pursuant to stock-based compensation plans. It does not specifically require disclosure of the *current* number of authorized shares available for grant. In addition, it may be difficult for investors to determine this number. Currently, a registrant submitting an equity compensation plan for security holder action need not provide any specific disclosure about its other equity compensation plans. In its annual study on stock plan dilution, the Investor Responsibility Research Center found that approximately 22% of the companies surveyed did not disclose the number of shares available for future issuance under their employee stock plans. See the IRRC Dilution Study.

[55] Paragraph 46 of SFAS 123 provides that ''[a]n entity that uses equity instruments to acquire goods or services other than employee services shall provide disclosures similar to those required [for employee transactions] *to the extent that those disclosures are important* in understanding the effects of those transactions on the financial statements'' (emphasis added). Consequently, a registrant has discretion to exclude non-employee grants and awards of equity instruments from its SFAS 123 disclosure. In addition, registrants need not apply the disclosure provisions of SFAS 123 to immaterial items, as determined based on a registrant's particular circumstances. See paragraph 244 of SFAS 123.

[56] See, for example, the NYSE Task Force Report, n. 52 above, at 14 (''The requisite information [to make dilution calculations] is not consistently available in any one place or format in corporate disclosure documents * * * .), the Letter dated April 2, 2001 from the Association of Publicly Traded Companies (''[t]he sheer volume and complexity of most corporate compensation proposals, coupled with stock option plans, makes it difficult for the average investor to interpret and effectively utilize the information provided.'') and the TIAA–CREF Letter (''[l]ack of transparency * * * limits the ability of shareholders * * * to protect themselves against plans that can be highly dilutive.'').

[57] See the Proposing Release at n. 17.

[58] This table does not describe all of the information that registrants must disclose under SFAS 123.

Equity compensation disclosure Item	Required by SFAS 123	Required by Item 201	Required by Item 601	Location of disclosure (financial statements/form 10-K/proxy by statement)
Terms of significant modifications of outstanding awards.	Yes (¶ 47f)	No	No	Financial Statements.
Range of exercise prices for outstanding options.	Yes (¶ 48)	No	No	Financial Statements.
Weighted-average exercise price of outstanding options and similar instruments.	Yes (¶ 48)	Yes*	No	Financial Statements/Form 10–K/Proxy Statement.**
Weighted-average remaining contractual life of outstanding options.	Yes (¶ 48)	No	No	Financial Statements.
Number of securities remaining available for future issuance.	No	Yes*	No	Form 10-K/Proxy Statement.**
Description of material terms of each plan that has not been approved by security holders.	No	Yes	No	Form 10-K/Proxy Statement.**
Filing of compensatory plans in which named executive officers and directors participate and any other compensatory plan unless immaterial.	No	No	Yes	Form 10-K.

*Disclosed by category: plans approved by security holders and plans not approved by security holders.
**May be incorporated by reference into the annual report on Form 10-K by including in proxy statement.

C. Location of Disclosure

As proposed, registrants were to include the table in the proxy statement whenever they submitted a compensation plan for security holder action and in the annual report on Form 10–K in all other years. In the Proposing Release, we sought comment as to whether the proposed location of the disclosure was appropriate. Most commenters suggested that, for consistency and to avoid confusion, we should require disclosure in the same document each year.[59] Citing the relevance of the information when electing directors, several commenters suggested that we require disclosure in the proxy statement in all instances, even if a registrant were not submitting a compensation plan for security holder action.[60] Other commenters, on the other hand, recommended that we require the disclosure only in the annual report on Form 10–K.[61]

Although the idea of requiring the disclosure in a single location is appealing, we have elected not to do so for several reasons. If we adopted a requirement that the table appear only in proxy statements, a significant number of companies whose reporting obligations arise solely under Section 15(d) of the Exchange Act[62] would not be subject to the requirement. These companies are not required to prepare and file proxy statements. Further, we are not persuaded that, as a general rule, the proposed disclosure is material to voting decisions by security holders other than those relating to compensation plans.[63]

We also do not believe that the table should be located exclusively in the annual report on Form 10–K. Although the annual report on Form 10–K is filed with us, a registrant is not required to deliver it to security holders.[64] Thus, security holders must take some affirmative action to obtain the information.[65] In addition, limiting the table to the annual report on Form 10–K would misplace the disclosure in those cases when the information would be useful to investors in assessing the merits of a compensation plan submitted for security holder action.[66]

[59] In the Proposing Release, we also sought comment as to whether the table should be required in registration statements filed under the Securities Act of 1933 [15 U.S.C. §§ 77a *et seq.*]. While no commenter favored a blanket requirement for all registration statements, two commenters suggested that registrants include the table in registration statements filed in connection with initial public offerings. See the NYC Bar Letter and the NY State Bar Letter. Two commenters expressly opposed a registration statement disclosure requirement. See the ABA Letter and the Letter dated June 11, 2001 from the New York Stock Exchange (the ''NYSE Letter''). Generally, registrants already include information about the possible effects of future sales of securities, including outstanding options, in registration statements for initial public offerings to the extent that this information is material. Item 506 of Regulation S–K [17 CFR 229.506] requires specific information in a registration statement filed in connection with an initial public offering about dilution, as well as with respect to common equity securities that have been acquired by officers and directors. In addition, Item 201(a)(2) of Regulation S–K [17 CFR 229.201(a)(2)] requires disclosure of the amount of common equity that is subject to outstanding options or warrants. Further information is available pursuant to the disclosure required by Item 402 of Regulation S–K. Accordingly, except where the table is part of an annual report on Form 10–K or 10–KSB that is incorporated by reference into a prospectus, we are not extending the disclosure requirements to registration statements at this time. See Instruction 10 to new Item 201(d) of Regulation S–B and Instruction 10 to new Item 201(d) of Regulation S–K.

[60] See, for example, the ABA Letter, the CII Letter and the SWIB Letter.

[61] See, for example, the Letter dated March 29, 2001 from Ernst &Young LLP, the Second Lucent Letter and the NYC Bar Letter.

[62] 15 U.S.C. § 78o(d).

[63] Some commenters argued that even where a registrant is not submitting a compensation plan for security holder action, the new disclosure contains relevant information with respect to the backgrounds and compensation of directors and executive officers that should be available for evaluation in connection with the election of directors. In general, we find the relevance of the new disclosure to be somewhat attenuated from decisions regarding the election of directors. Moreover, there would be little connection when a nominee has not served previously as a director of the registrant. Finally, the relevance of the new disclosure to decisions concerning the remuneration of directors and officers also is questionable because the table requires general information that does not specifically identify director and executive officer awards.

[64] Registrants are required, however, to provide security holders with an annual report to security holders pursuant to Exchange Act Rule 14a–3(b) [17 CFR 240.14a–3(b)] when soliciting proxies in connection with an annual meeting of security holders at which directors are to be elected. Typically, this annual report to security holders includes the financial statements of the registrant, including the required SFAS 123 disclosure. In some instances, registrants use their annual report on Form 10–K to satisfy this delivery requirement. See Exchange Act Rule 14a–3(d) [17 CFR 240.14a–3(d)].

[65] Under Exchange Act Rule 14a–3(b)(10) [17 CFR 240.14a–3(b)(10)], a registrant must include in its proxy statement or annual report an undertaking to provide without charge to each security holder solicited, upon written request, a copy of the registrant's annual report on Form 10–K. Once filed, the annual report on Form 10–K also is available via our Electronic Data Gathering, Analysis and Retrieval, or EDGAR, system.

[66] Another possible location for the table is the annual report to security holders required by Exchange Act Rule 14a–3(b). This alternative has several drawbacks, however. First, because it is not considered a ''filed'' document, the annual report is not subject to the express civil liability provisions of Section 18 of the Exchange Act [15 U.S.C. § 78r]. See Exchange Act Rule 14a–3(c) [17 CFR 240.14a–3(c)]. Second, as with proxy statements, the disclosure would not apply to registrants subject to reporting solely under Section 15(d) of the Exchange Act. Finally, because principally financial information is required to be included in the annual report, non-financial disclosure such as the table would appear out of place.

We have concluded that the best way to promote consistency, clarity and relevant placement of the new information is to require that the table be included each year in a registrant's annual report on Form 10–K [67] and, additionally, in the proxy statement when the registrant is submitting a compensation plan for security holder action.[68] In situations where a registrant is required to include the information in both filings, it may satisfy its Form 10–K disclosure obligation by incorporating the required information by reference from its definitive proxy statement, if that statement involves the election of directors and is filed not later than 120 days after the end of the fiscal year covered by the Form 10–K.[69]

D. Filing Copies of Non-Security Holder-Approved Plans

In the Proposing Release, we sought comment as to whether, in lieu of, or in addition to, the narrative disclosure required for an equity compensation plan that has been adopted without the approval of security holders, a registrant should be required to file a copy of the plan as an exhibit to the registrant's annual report on Form 10–K for the fiscal year in which the plan was adopted.[70] Several commenters favored a filing requirement in addition to requiring registrants to provide narrative disclosure of the ''material features'' of non-security holder-approved equity compensation plans.[71]

Item 601(b)(10) of Regulation S–K [72] requires registrants to file material contracts as exhibits to many of their documents filed under the Securities Act of 1933 (the ''Securities Act'') and the Exchange Act. Of particular relevance is the provision in Item 601(b)(10)(iii) stating that ''any management contract or other compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing * * * in which any director or any of the named executive officers of the registrant * * * participates shall be deemed material and shall be filed.'' [73] Item 601(b)(10)(iii) also states that ''any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the registrant participates shall be filed unless immaterial in amount or significance.'' [74] Some commenters expressed concern that non-security holder-approved plans, many of which exclude executive officers and directors, often do not fall within these provisions.[75]

We believe this concern has merit. Accordingly, we have amended Item 601(b)(10) to require registrants to file any equity compensation plan adopted without the approval of security holders in which any employee (whether or not an executive officer or director of the registrant) participates, unless immaterial in amount or significance.[76] Compliance with this requirement should ensure that significant non-security holder-approved plans are available to investors.[77] Coupled with the required narrative description of non-security holder-approved plans, investors should have access to complete information about a registrant's principal equity compensation plans.

III. Paperwork Reduction Act Analysis

The amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995, [78] or PRA. We published a notice requesting comment on the collection of information requirements in the Proposing Release, and submitted these requirements to the Office of Management and Budget, or OMB, for review.[79] Subsequently, OMB approved the proposed information collection requirements.

As discussed in Section I above, we received several comment letters on the proposals. We have made a number of changes to the proposals in response to these comments. Accordingly, we are revising our previous burden estimates. We are submitting the revised estimates to the OMB for approval.[80] An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

A. Summary of Amendments

The amendments require tabular disclosure of the number of securities to be issued upon the exercise, and the weighted-average exercise price, of all outstanding options, warrants and rights under a registrant's equity compensation plans, as well as the number of securities remaining available for future issuance under these plans and certain related information. Disclosure is to be made in two categories: plans that have been approved by security holders and plans that have not been approved by security holders. Registrants must include the table in their annual reports on Form 10–K or 10–KSB, and, additionally, in their proxy or information statements in years when they are submitting a compensation plan for security holder action. Registrants also must file copies of their non-security holder-approved plans with us, unless immaterial in amount or significance. Preparing and filing an annual report on Form 10–K or 10–KSB is a collection of information. Similarly, preparing, filing and disseminating a proxy or information statement is a collection of information.[81] The collection of

[67] See revised Item 12 of Part III of Form 10–K and revised Item 11 of Part III of Form 10–KSB.

[68] See new Item 10(c) of Schedule 14A. Proxy or information statement disclosure is triggered by the submission of any compensation plan for security holder action, including cash-only plans.

[69] Similar incorporation by reference is permitted with respect to the other disclosure items required by Part III of Form 10–K and 10–KSB. See General Instruction E(3) to Form 10–KSB and General Instruction G(3) to Form 10–K.

[70] See Section II.A.4 above.

[71] See, for example, the CII Letter, the SWIB Letter and the TIAA–CREF Letter. Other commenters suggested that we require registrants to file copies of all equity compensation plans (whether or not approved by security holders). See the ABA Letter and the NYSE Letter.

[72] 17 CFR 229.601(b)(10).

[73] 17 CFR 229.601(b)(10)(iii)(A). Nondiscriminatory, broad-based compensatory plans, contracts or arrangements are exempt from this requirement. See Item 601(b)(10)(iii)(B)(*4*) [17 CFR 229.601(b)(10)(iii)(B)(*4*)].

[74] *Id.*

[75] See, for example, the CII Letter and the Letter dated March 29, 2001 from the Office of the State Comptroller of the State of New York.

[76] See new Item 601(b)(10)(iii)(B) of Regulation S–B [17 CFR 228.601(b)(10)(iii)(B)] and new Item 601(b)(10)(iii)(B) of Regulation S–K [17 CFR 229.601(b)(10)(iii)(B)]. This is consistent with our action in 1981 amending then-Item 7 of Regulation S–K to reformulate the definition of ''material contracts'' as applied to remunerative plans, contracts or arrangements. See Release No. 33–6287 (Feb. 6, 1981) [46 FR 11952]. Previously, we had indicated that remuneration plans in which directors or executive officers of the registrant did not participate generally did not need to be filed as exhibits. See Release No. 33–6230, Section II.A.2.b.i. (Aug. 27, 1980) [45 FR 58822].

[77] With respect to an existing non-security holder-approved equity compensation plan subject to new Item 601(b)(10)(iii)(B) of Regulation S–B or new Item 601(b)(10)(iii)(B) of Regulation S–K that is in effect as of the effective date of these amendments and that has not been filed previously, a copy of the plan must be filed as an exhibit to the annual report on Form 10–K or 10–KSB filed by the registrant for its first fiscal year ending on or after March 15, 2002.

[78] 44 U.S.C. § 3501 *et seq.*

[79] Publication and submission were in accordance with 44 U.S.C. § 3507(d) and 5 CFR 1320.11.

[80] The titles for the collections of information affected by the amendments are (1) ''Regulation 14A (Commission Rules 14a–1 through 14b–2 and Schedule 14A),'' (2) ''Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C),'' (3) ''Form 10–K,'' (4) ''Form 10–KSB,'' (5) ''Regulation S–B'' and (6) ''Regulation S–K.''

[81] The likely respondents subject to the collections of information include entities whose reporting obligations arise under the Exchange Act. The reporting requirements of Section 13 of the Exchange Act [15 U.S.C. § 78m], as well as the proxy disclosure requirements of Section 14 of the

Continued

information is mandatory for all registrants and there is no mandatory retention period for the information collected. The collection of information will not be kept confidential.

B. Summary of Comment Letters and Revisions to Proposals

We requested comment on the PRA analysis contained in the Proposing Release. We received six comment letters specifically addressing the estimated paperwork burden associated with the collections of information.[82] These commenters indicated that the amount of time required to comply with the proposals would be significant for many registrants and substantially greater than our estimates. One commenter estimated that, if adopted, the proposals would add at least four pages to its disclosure documents and, where the disclosure appeared in the proxy statement, would result in additional printing costs of $100,000 and additional mailing costs of $200,000 for the extra pages.[83] Another commenter suggested that we offset any increased costs to registrants by eliminating current requirements that do not result in the disclosure of useful information.[84] A third commenter suggested that we consider providing a model form of disclosure for small businesses to reduce their compliance burden.[85]

In response to these comments, we have made a number of changes to the proposals, including eliminating two of the proposed tabular columns and permitting aggregated disclosure. We also are permitting registrants with non-security holder-approved plans to describe the material terms of these plans by cross-referencing to their SFAS 123 disclosure. These changes will streamline compliance and, correspondingly, reduce the burden on registrants. While the amendments require the filing of non-security holder-approved equity compensation plans unless immaterial in amount or significance, this should not increase the burden for registrants significantly as these documents are readily available and will be filed electronically.

C. Revisions to Reporting and Cost Burden Estimates

As a result of the changes described above and a change in one of our underlying assumptions,[86] the reporting and cost burden estimates for the collections of information have changed. Accordingly, we have revised the estimated information collection requirements that were originally submitted to the OMB. With respect to Forms 10–K and 10–KSB, we have increased our estimate by 1,174 hours in the case of Form 10–K and increased our estimate by 707 hours in the case of Form 10–KSB. With respect to Schedules 14A and 14C, we have decreased our estimate by 13,139 hours in the case of Schedule 14A and decreased our estimate by 139 hours in the case of Schedule 14C.

Our estimates are based on several assumptions. First, we estimate that approximately 60%[87] of the registrants that file an annual report on either Form 10–K or 10–KSB maintain equity compensation plans and will be required to provide the new disclosure table.[88] We also estimate that approximately 20%[89] of these registrants maintain non-security holder-approved equity compensation plans and, thus will be required to describe the material features of these plans and file copies with us unless immaterial in amount or significance.[90] We further estimate that, in any year, 30%[91] of the registrants with equity compensation plans will either adopt a new plan or amend an existing plan to increase the number of securities authorized for issuance under the plan, thereby triggering proxy or information statement disclosure.[92] In this situation,

Exchange Act, apply to entities that have securities registered under Section 12 of the Exchange Act [15 U.S.C. § 78l]. The reporting requirements of Section 15(d) of the Exchange Act apply to entities with effective registration statements under the Securities Act that are not otherwise subject to the registration requirements of Section 12 of the Exchange Act.

[82] See the Letter dated April 17, 2001 from the American Institute of Certified Public Accountants (the ''AICPA Letter''), the Letter dated April 2, 2001 from the Association of Publicly-Traded Companies (the ''APTC Letter''), the Letter dated April 2, 2001 from Lucent Technologies Inc. (the ''First Lucent Letter''), the Letter dated May 22, 2001 from the New York State Bar Association, the Letter dated August 17, 2001 from Leonard S. Stein (the ''Stein Letter'') and the Letter dated August 26, 2001 from Hendrick Vater.

[83] See the Letter dated April 9, 2001 from Lucent Technologies Inc.

[84] See the APTC Letter.

[85] See the Stein Letter.

[86] We have changed our assumption about the number of registrants with equity compensation plans that, in any year, either adopt a new plan or amend an existing plan to increase the number of securities authorized for issuance under the plan. In the Proposing Release, we estimated that 50% of the registrants with equity compensation plans would either adopt a new plan or amend an existing plan each year. Based on the available survey data, we have revised this assumption to 30%. See n. 91 below.

[87] This estimate is made after a review of available survey data, which varies widely. For example, in its most recent study of the ''S&P Super 1,500'' (the combination of the S&P 500, the S&P MidCap 400 and the S&P SmallCap 600), the Investor Responsibility Research Center determined that, of the 1,157 companies examined, 1,142 (98.7%) awarded equity to some portion of their employees. See Investor Responsibility Research Center, *Potential Dilution—2000, The Potential Dilution from Stock Plans at the S&P Super 1,500 Companies* (2000). In contrast, a Pilot Survey conducted by the Bureau of Labor Statistics in 1999 determined that 22% of publicly-held companies offered stock options to their employees. This survey sampled 2,100 ''establishments,'' of which approximately 1 in 10 were publicly-held companies. See Bureau of Labor Statistics, *Pilot Survey on the Incidence of Stock Options in Private Industry in 1999*, (Oct. 11, 2000), available at *http://www.bls.gov/ncs/ocs/sp/ncnr0001.txt*. Further, in the Proposing Release we sought comment as to whether our estimates of the burden of the proposed collections of information were accurate. We received no comment letters responding to that request. Because of variations in the available data, we also have estimated the reporting and cost burdens for the proposed collections of information assuming that 98% of the registrants that file annual reports on Form 10–K or 10–KSB maintain an equity compensation plan and are subject to the required disclosure. See nn. 108 and 110 below.

[88] Based on the actual number of registrants filing annual reports on Form 10–K and 10–KSB, we estimate that 6,229 registrants that file on Form 10–K (10,381 × 60%) maintain equity compensation plans (''Form 10–K Filers'') and 2,185 registrants that file on Form 10–KSB (3,641 × 60%) maintain equity compensation plans (''Form 10–KSB Filers'').

[89] In the Proposing Release, we estimated that this figure was 25%. The available survey data does not appear to be representative of the general registrant population. See William M. Mercer, Inc., *Equity Compensation Survey* (2001) (48% of survey respondents (83 participants) maintained non-security holder-approved stock option plans for employees below management level; 60% of such plans most prevalent in large companies (more than 5,000 employees)); iQuantic, Inc., *Trends in Equity Compensation 1996–2000* (2000) (27.3% of survey respondents in 1999 (161 participants) maintained non-security holder-approved stock option plans, compared to 3.2% before 1996). After discussions with several compensation professionals, we reduced our estimate to 20%.

[90] We estimate that of the Form 10–K Filers, 1,246 (6,229 × 20%) maintain a non-security holder-approved equity compensation plan (''Form 10–K Filers with Non-Approved Plans'') and 4,983 (6,229 × 80%) do not (''Form 10–K Filers with Only Approved Plans''). We estimate that of the Form 10–KSB Filers, 437 (2,185 × 20%) maintain a non-security holder-approved equity compensation plan (''Form 10–KSB Filers with Non-Approved Plans'') and 1,748 (2,185 × 80%) do not (''Form 10–KSB Filers with Only Approved Plans'').

[91] This estimate is based on a review of available survey data. In its most recent study, the Investor Responsibility Research Center determined that, of 1,157 companies studied in calendar year 2000, 337 (29%) presented proposals for new or amended equity compensation plans to security holders. See Investor Responsibility Research Center, *Potential Dilution—2000, The Potential Dilution from Stock Plans at the S&P Super 1,500 Companies* (2000). In its most recent study, Pearl Meyers & Partners found that new plan authorizations among the top 200 companies were submitted by 58 companies in 2000 (29%). See Pearl Meyers & Partners, Inc., *2000 Equity Stake, Study of Management Equity Participation in the Top 200 Corporations (2000).*

[92] We estimate that of the Form 10–K Filers with Only Approved Plans, 1,495 (4,983 × 30%) submit a new or amended equity compensation plan for security holder approval annually (''Form 10–K Filers with Only Approved Plans Subject to Section 14'') and of the Form 10–K Filers with Non-Approved Plans, 374 (1,246 × 30%) submit a new or amended equity compensation plan for security holder approval annually (''Form 10–K Filers with Non-Approved Plans Subject to Section 14''). Similarly, we estimate that of the Form 10–KSB

we have assumed that a registrant will include the required disclosure in its proxy or information statement and incorporate that disclosure by reference into its annual report on Form 10–K or 10–KSB. We estimate that approximately 28%[93] of the registrants filing annual reports on Form 10–K or 10–KSB are subject to Section 13 of the Exchange Act by virtue of Section 15(d) of the Exchange Act and, thus, do not file proxy or information statements,[94] and that approximately 98%[95] of the registrants file proxy, rather than information, statements in connection with their annual meeting of security holders at which directors are to be elected.[96] Finally, we estimate that preparation of the required tabular disclosure will take two burden hours and, where required, preparation of the description of the material features of a non-security holder-approved equity compensation plan will take two burden hours.[97]

Our revised estimate of the total burden hours of the required collections of information is set forth in the following table.

TABLE—BURDEN HOUR ESTIMATES

Form	Filings/year			Estimated burden hours/filing			Estimated burden hours/year	
	Estimated filings/year	Estimated filings subject to tabular disclosre	Estimated filings subject to tabular and narrative disclosrue	Before amendments	Adjusted for tabular disclosure	Adjusted for tabular and narrative disclosure	Before amendments	After amendments
	(A)	(B)	(C)	(D)	(E)[98]	(F)[99]	(G) = (A) x (D)	(H) = (B) x (E) + (C) x (F)
0-K	10,381	[100] 3,907	[101] 977	430	430.4	430.6	4,463,830	4,469,691
10-KSB	3,641	[102] 1,371	[103] 343	294	294.4	294.6	1,070,454	1,072,511
14A	9,892	[104] 1,423	[105] 356	18.2	18.3	18.4	179,966	182,101
14C	253	[106] 30	[107] 7	18.1	18.2	18.3	4,582	4,626
Total							5,718,832	5,728,929

Filers with Only Approved Plans, 524 (1,748 × 30%) submit a new or amended equity compensation plan for security holder approval annually (''Form 10–KSB Filers with Only Approved Plans Subject to Section 14'') and of the Form 10–KSB Filers with Non-Approved Plans, 131 (437 × 30%) submit a new or amended equity compensation plan for security holder approval annually (''Form 10–KSB Filers with Non-Approved Plans Subject to Section 14'').

[93] This estimate is based on a comparison of the actual number of registrants filing annual reports on Form 10–K or 10–KSB during the 2000 fiscal year (10,381 + 3,641 = 14,022) with the actual number of registrants filing proxy or information statements during the 2000 fiscal year (9,892 + 253 = 10,145), or 10,145/14,022.

[94] Thus, we have subtracted 419 registrants (1,495 × 28%) from the group of Form 10–K Filers with Only Approved Plans Subject to Section 14, 105 registrants (374 × 28%) from the group of Form 10–K Filers with Non-Approved Plans Subject to Section 14, 147 registrants (524 × 28%) from the group of Form 10–KSB Filers with Only Approved Plans Subject to Section 14 and 37 registrants (131 × 28%) from the group of Form 10–KSB Filers with Non-Approved Plans Subject to Section 14.

[95] This estimate is based on a comparison of the actual number of registrants filing proxy statements during the 2000 fiscal year (9,982) with the actual number of registrants filing information statements during the same period (253), or 9,982/10,145.

[96] Thus, we estimate that of the 1,076 Form 10–K Filers with Only Approved Plans Subject to Section 14, 1,054 (1,076 × 98%) will file proxy statements and 22 will file information statements, of the 269 Form 10 × K Filers with Non-Approved Plans Subject to Section 14, 264 (269 × 98%) will file proxy statements and five will file information statements, of the 377 Form 10–KSB Filers with Only Approved Plans Subject to Section 14, 369 (377 × 98%) will file proxy statements and eight will file information statements and of the 94 Form 10–KSB Filers with Non-Approved Plans Subject to Section 14, 92 (94 × 98%) will file proxy statements and two will file information statements.

[97] Even though we have streamlined compliance in order to reduce the burden on registrants, we have not reduced the number of estimated burden hours to prepare the required disclosure. This decision is in response to comments that our initial burden hour estimate was too low. See the AICPA Letter and the First Lucent Letter.

In addition to the internal hours they will expend,[108] we expect that registrants will retain outside counsel to assist in the preparation of the required disclosures.[109] The total dollar cost of complying with Form 10–K and Form 10–KSB, revised to include outside counsel costs expected from the amendments, is estimated to be $2,345,268,300 for Form 10–K, an increase of $1,758,300 from the current annual burden of $2,343,510,000, and $562,605,100 for Form 10–KSB, an increase of $617,100 from the current annual burden of $561,988,000. The total dollar cost of complying with Regulations 14A and 14C, revised to include outside counsel costs expected from the amendments, are estimated to be $93,254,500 for Regulation 14A, an increase of $640,500 from the current annual burden of $92,614,000, and $2,382,200 for Regulation 14C, an increase of $13,200 from the current annual burden of $2,369,000.[110]

D. Request for Comment

We request comment in order to (a) evaluate whether the collections of information are necessary for the proper performance of our functions, including whether the information will have practical utility, (b) evaluate the accuracy of our estimate of the burden of the collections of information, (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected and (d) evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology.[111]

Any member of the public may direct to us any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, with reference to File No. S7–04–01. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7–04–01 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. Costs and Benefits of Final Rules

A. Background

The use of equity compensation, particularly stock options, has grown significantly during the last decade.[112] Consequently, existing security holders may face higher levels of dilution of their ownership interests as some companies issue more shares of their stock to employees.[113] Since the distribution of equity may result in a significant reallocation of ownership in an enterprise between existing security holders and management and employees, investors have a strong interest in understanding a registrant's equity compensation program.[114]

Until recently, security holder approval was required for most equity compensation plans. However, as approval requirements have been relaxed[115] and as opposition to these plans has grown,[116] an increasing number of registrants have adopted stock option plans without the approval of security holders,[117] thus potentially obscuring investors' ability to assess the dilutive effect of a registrant's equity compensation program. Our current rules do not require that a registrant disclose specific information about its non-security holder-approved equity compensation plans.[118] Nor do current

[98] We estimate that registrants will prepare 50% of the required disclosure and outside counsel will prepare the remaining 50%. Accordingly, this estimate reflects the addition of one burden hour to prepare the required tabular disclosure. See n. 97 above and the accompanying text.

[99] We estimate that registrants will prepare 50% of the required disclosure and outside counsel will prepare the remaining 50%. Accordingly, this estimate reflects the addition of two burden hours to prepare the required tabular and narrative disclosure. See n. 97 above and the accompanying text.

[100] We arrived at this estimate by taking the number of Form 10–K Filers (see n. 88 above) and subtracting (a) the number of Form 10–K Filers with Non-Approved Plans (see n. 90 above) and (b) the number of Form 10–K Filers with Only Approved Plans Subject to Section 14 (see nn. 92 and 94 above), or (6,229 − 1,246 − 1,076).

[101] We arrived at this estimate by taking the number of Form 10–K Filers with Non-Approved Plans (see n. 90 above) and subtracting the number of Form 10–K Filers with Non-Approved Plans Subject to Section 14 (see nn. 92 and 94 above), or (1,246 − 269).

[102] We arrived at this estimate by taking the number of Form 10–KSB Filers (see n. 88 above) and subtracting (a) the number of Form 10–KSB Filers with Non-Approved Plans (see n. 90 above) and (b) the number of Form 10–KSB Filers with Only Approved Plans Subject to Section 14 (see nn. 92 and 94 above), or (2,185 − 437 − 377).

[103] We arrived at this estimate by taking the number of Form 10–KSB Filers with Non-Approved Plans (see n. 90 above) and subtracting the number of Form 10–KSB Filers with Non-Approved Plans Subject to Section 14 (see nn. 92 and 94 above), or (437 − 94).

[104] We arrived at this estimate by taking the number of Form 10–K Filers with Only Approved Plans Subject to Section 14 that will file proxy statements and adding the number of Form 10–KSB Filers with Only Approved Plans Subject to Section 14 that will file proxy statements (see n. 96 above), or (1,054 + 369).

[105] We arrived at this estimate by taking the number of Form 10–K Filers with Non-Approved Plans Subject to Section 14 that will file proxy statements and adding the number of Form 10–KSB Filers with Non-Approved Plans Subject to Section 14 that will file proxy statements (see n. 96 above), or (264 + 92).

[106] We arrived at this estimate by taking the number of Form 10–K Filers with Only Approved Plans Subject to Section 14 that will file information statements and adding the number of Form 10–KSB Filers with Only Approved Plans Subject to Section 14 that will file information statements (see n. 96 above), or (22 + 8).

[107] We arrived at this estimate by taking the number of Form 10–K Filers with Non-Approved Plans Subject to Section 14 that will file information statements and adding the number of Form 10–KSB Filers with Non-Approved Plans Subject to Section 14 that will file information statements (see n. 96 above), or (5 + 2).

[108] Assuming that 98% of the registrants that file annual reports on Form 10–K or 10–KSB maintain an equity compensation plan and are subject to the required disclosure, the estimated burden hours per year resulting from the amendments would be 16,511 hours, increasing this estimate to 5,735,343 hours.

financial reporting disclosure rules require that non-security holder-approved plans be identified.[119]

Consequently, it is often difficult for investors to determine whether they have adequate information about a registrant's equity compensation program. In response to ongoing investor concerns,[120] in January 2001 we proposed amendments to our rules to enhance the quality of information available to investors about equity compensation plans.[121]

B. Response to Comment Letters

In the Proposing Release, we noted that registrants would incur costs in complying with the proposals. We also noted that these costs, to the extent that they could be estimated, would not be significant, as the required disclosure can be derived from information that is readily available to registrants through the routine administration of their equity compensation programs. We requested comment on the costs and benefits of the proposals. Of the comment letters we received, 22 respondents discussed the costs and benefits associated with the proposals.[122] Most of the comment letters addressed these matters in general terms.

Several respondents asserted that, because the proposals duplicated disclosure already required in registrants' audited financial statements, the cost of providing information to investors would increase without any useful benefit.[123] In response to these comments, we have revised the proposals to eliminate redundant disclosure and to minimize the overlap with financial reporting requirements, thereby reducing the cost of compliance. As discussed in Subsection C below, the amendments will enhance the quality of the disclosure available to investors about the dilutive effect of registrants' equity compensation programs.

Other respondents, while generally supporting the proposals, suggested that we scale back the required disclosure to reduce compliance costs. For example, some respondents indicated that requiring plan-by-plan disclosure would create an undue burden for registrants without providing an incremental benefit to investors.[124] In response to these comments, we have revised the proposals to permit aggregated disclosure of information about plans and individual equity compensation arrangements and to allow the required narrative summary of a non-security holder-approved stock option plan to be provided by a cross-reference to a description of the plan in a registrant's financial statements.[125] Some respondents suggested that we expand the required disclosure to include additional information, such as weighted-average exercise price data and information about existing equity compensation plans being submitted for security holder action. They also requested that we require the filing of non-security holder-approved equity compensation plans. We have made these changes.[126]

Most respondents suggested that the proposed disclosure be required in the same document each year, to both streamline compliance and to minimize investor confusion. While we carefully considered this suggestion, ultimately we concluded that these concerns were outweighed by the need for consistent application of the disclosure to all registrants.[127] Accordingly, the required disclosure is to be provided each year in a registrant's annual report on Form 10–K or 10–KSB and, additionally, in the proxy or information statement in years when the registrant is submitting a compensation plan for security holder action.

C. Benefits

1. Disclosure of Non-Security Holder-Approved Plans

New Item 201(d)(1) of Regulation S–K and Regulation S–B requires registrants to disclose whether they have one or more non-security holder-approved stock option plans by separately providing information about the dilutive effects of these plans. New Item 201(d)(3) of Regulation S–K and Regulation S–B requires that this disclosure be accompanied by a narrative summary of the material features of each non-security holder-approved plan. Also, as amended Item 601(b)(10) of Regulation S–K and Regulation S–B requires registrants to file a copy of any non-security holder-approved equity compensation plan with us unless the plan is immaterial in amount or significance.

Presently, it is difficult for investors to ascertain whether a registrant has adopted a non-security holder approved stock option plan.[128] If a plan is broad-based, restricts or prohibits the participation of officers and directors and does not permit the grant of tax-qualified stock options, for instance, it is unlikely to require security holder approval. Frequently, investors must examine the required public filings of a registrant made over several years in order to identify the registrant's stock option plans and determine if they have been approved by security holders. Even when a non-security holder-approved plan is identified, information about the plan may be limited since it may not be subject to our disclosure rules and may not be filed with us. The amendments will enable investors to ascertain if a registrant has adopted a non-security holder approved plan and highlight a

[109] One-half of the total burden resulting from the amendments is reflected as burden hours and the remainder is reflected in the total cost of complying with the information collection requirements. We have used an estimated hourly rate of $300.00 to determine the estimated cost to respondents of the disclosure prepared by outside counsel. We arrived at this hourly rate estimate after consulting with several private law firms.

[110] These cost burden increases reflect a change in our assumption of the number of registrants with equity compensation plans that either adopt a new plan or amend an existing plan to increase the number of securities authorized for issuance under the plan (see n. 85 above) and a change in the estimated hourly rate of outside counsel. With respect to Forms 10–K and 10–KSB, we increased our estimate by $937,300 in the case of Form 10–K and increased our estimate by $483,100 in the case of Form 10–KSB. With respect to Schedules 14A and 14C, we decreased our estimate by $8,089,500 in the case of Schedule 14A and decreased our estimate by $209,800 in the case of Schedule 14C. Assuming that 98% of the registrants that file annual reports on Form 10–K or 10–KSB maintain an equity compensation plan and are subject to the required disclosure, the estimated cost burden per year resulting from the amendments would be $4,946,400.

[111] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

[112] A study of stock-based pay practices at the nation's 200 largest corporations indicates that these companies allocated 15.2% of outstanding shares (calculated on a fully-diluted basis) for management and employee equity incentives in 2000, compared to only 6.9% in 1989. See Pearl Meyers & Partners, Inc., *2000 Equity Stake, Study of Management Equity Participation in the Top 200 Corporations* (2000). Both the size of individual awards and the number of companies that use equity broadly throughout the organization have increased significantly. See Core, Guay and Larcker, *Executive Equity Compensation and Incentives: A Survey,* Working Paper, University of Pennsylvania (2001), at 5–7.

[113] This question should be considered in the dilutive effect may already have occurred and is likely to be reflected in the basic earnings-per-share computation and security holders' equity data.

[122] These commenters included seven individual and institutional investors, four registrants and registrant associations, one self-regulatory organization and 10 members of the executive compensation consulting, accounting and legal communities.

[123] See, for example, the Letter dated April 2, 2001 from Arthur Andersen LLP (the ''AA Letter''), the Letter dated April 17, 2001 from the American Institute of Certified Public Accountants (the ''AICPA Letter''), the Letter dated March 29, 2001 from Emerson Electric Co., the Letter dated April 12, 2001 from Microsoft Corporation and the Letter dated April 2, 2001 from PricewaterhouseCoopers LLP (the ''PWC Letter'').

[127] See Section II.C above.

[128] Available information on non-security holder-approved stock option plans is sparse. See William M. Mercer, Inc. *Equity Compensation Survey* (2001) (48% of survey respondents (83 participants) maintained non-security holder-approved stock option plan for employees below management level; such plans (60%) most prevalent in large companies (more than 5,000 employees); iQuantic, Inc., *Trends in Equity Compensation 1996–2000* (2000) (27.3% of survey respondents in 1999 (161 participants) maintained non-security holder-approved stock option plans, compared to 3.2% before 1996).

description of the plan's material features.

2. Tabular Disclosure

New Item 201(d)(1) of Regulation S–K and Regulation S–B requires registrants to disclose, for their entire equity compensation program as in effect as of the end of the last completed fiscal year, the number of securities underlying, and the weighted-average exercise price of, outstanding options, warrants and rights and the number of securities remaining available for future issuance. This disclosure is to be made separately for plans approved by security holders and plans that have not been approved by security holders.

The required disclosure will assist investors in assessing the potential dilution from a registrant's equity compensation program in two ways. First, the required disclosure of the number of securities to be issued upon the exercise, and weighted-average exercise price, of all outstanding options, warrants and rights will enable investors to view this information in two categories: plans approved by security holders and plans not approved by security holders. While numerical and weighted-average exercise price information is presently available in the footnotes to a registrant's audited financial statements, this disclosure does not separately identify the potential dilutive effect of any non-security-holder approved stock option plans.

Second, disclosure of the number of securities available for future issuance under a registrant's equity compensation plans will enable investors to better calculate the ''overhang[129] resulting from the registrant's entire equity compensation program. Under existing disclosure requirements, it is not always possible to make this calculation.[130] This information may be useful to investors where the cost of a registrant's equity compensation plan exceeds its incentive effects. The new disclosure also will enhance the ability of investors and others, such as proxy review firms, to monitor the impact of a board of directors' actions concerning equity compensation matters. Access to this information will make it easier for investors to determine both the portion of the current value of a business that will be transferred to option holders upon exercise and the potential allocation of future cash flow rights.[131]

While the economic impact of outstanding options, warrants and rights is incorporated into the presentation of diluted earnings-per-share under SFAS 128, this calculation differs from the new disclosure in several ways. First, it does not isolate ''compensatory'' instruments. Typically, the diluted earnings-per-share figure combines the dilutive effect of compensatory options, warrants and rights with that of other outstanding convertible securities. Second, SFAS 128 employs the so-called ''treasury stock method'' to compute diluted earnings-per-share. Among other things, this methodology excludes ''out-of-the-money'' options and warrants from the computation and requires certain assumptions about the timing of option exercises and the use of the assumed proceeds of exercise to arrive at the total number of potentially dilutive securities. Finally, while weighted-average exercise price information is available for various option groupings under SFAS 123, it does not differentiate between equity compensation plans that have been approved by security holders and plans that have not been approved by security holders.

D. Costs

The amendments will increase the cost of preparing annual reports on Form 10–K and 10–KSB and proxy and information statements. Registrants must compile the required information, place it in the appropriate category and prepare the required table. In addition, registrants with non-security holder-approved stock option plans must prepare a narrative summary of the material features of each plan and file a copy of any material plan with us. Registrants also will incur an increase in printing and distribution costs as a result of the amendments.

While several respondents indicated that the cost estimates in the Proposing Release were too low,[132] only one provided an alternative cost estimate. This respondent stated that compliance could result in additional costs approximating $300,000 in years when disclosure was required in its proxy statement.[133] The respondent's estimate is no longer relevant because of the substantial revisions that we have made to the proposals, as discussed in Subsection B above.

The required disclosure will provide investors both with new information and with an alternative means for analyzing currently available information. With respect to the dilution disclosure, we believe that the compliance costs are warranted because this information is not otherwise available to investors. Moreover, these costs should be minimal because this information can be derived from information that is readily available to registrants through the routine administration of their equity compensation programs.

With respect to the information concerning non-security holder-approved stock option plans, much of the required tabular disclosure, such as the number of outstanding options, warrants and rights and the related weighted-average exercise price data, is already maintained for purposes of satisfying financial reporting requirements. The amendments merely require registrants to disclose this information on the basis of whether or not the related plan has been approved by security holders. In addition, many registrants summarize the material features of their equity compensation plans to satisfy their SFAS 123 disclosure obligations. Indeed, one respondent indicated that the amendments would result in only minimal additional costs to registrants because, in their experience, most registrants already maintain the required information in order to comply with SRO rules and for effective plan administration.[134]

Although the amendments will increase the length of registrants' annual reports on Form 10–K and 10–KSB, as well as their proxy and information statements, generally this should not have a major impact on a registrant's

[129] This measure may be formulated in different ways. For purposes of this discussion, ''overhang'' means the sum of the number of securities underlying outstanding options, warrants and rights plus the number of securities remaining available for future issuance under the registrant's existing equity compensation plans, and is often expressed as a percentage of the total number of outstanding securities.

[130] It may be difficult for investors to calculate the ''overhang'' of a registrant's equity compensation program because the number of securities available for future issuance under the registrant's plans may not be disclosed or apparent. Currently, a registrant submitting an equity compensation plan for security holder action need not provide any specific disclosure about its other equity compensation plans. Moreover, in its annual study on stock plan dilution, the Investor Responsibility Research Center found that approximately 22% of the companies surveyed did not disclose the number of shares available for future issuance under their employee stock plans. See the IRRC Dilution Study.

[131] While the full dilutive impact of these authorized but unissued securities cannot be assessed until derivative instruments have been granted and the prices for which the underlying securities may be issued can be compared to existing market values, this information, combined with knowledge of the minimum exercise price at which these instruments may be granted, may provide useful insight into the potential future economic consequences of the program.

[132] See, for example, the AA Letter, the AICPA Letter, the Letter dated May 22, 2001 from the New York State Bar Association and the PWC Letter.

[133] See the Letter dated April 9, 2001 from Lucent Technologies Inc.

[134] See the ABA Letter.

printing and distribution costs. We have revised the proposals to reduce and standardize the size of the required tabular disclosure. These revisions should ensure that registrants do not incur significant additional printing and postage charges to prepare and distribute their proxy or information statements to security holders. While in most instances, the required disclosure should not exceed one-third of a page, where a registrant has one or more non-security holder-approved stock option plans, the disclosure may be longer. These registrants may incur additional expense to print and distribute their proxy or information statement materials. While we do not expect these costs to be significant, we have estimated these amounts to be approximately $750 per registrant.[135]

For the reasons discussed above, we do not believe that the amendments will lead to significant compliance costs for registrants.[136] Notwithstanding the foregoing, we have adjusted our initial cost estimates to reflect the revisions made to the proposals. Because the size and scope of equity compensation programs vary among registrants, it is difficult to provide an accurate cost estimate with which all parties will agree; however, we estimate that each of the approximately 8,400 registrants[137] subject to the amendments will spend an average of approximately one to two hours each year and incur an average annual cost of approximately $393[138] to prepare the disclosure. Thus, the aggregate cost of the amendments is estimated to be approximately $3,300,000.

E. Conclusion

Based on the information provided in the comment letters and our own analysis, we believe that the amendments will enhance the quality of disclosure available to investors about registrants' equity compensation plans, thereby leading to better-informed investment and voting decisions. These benefits are difficult to quantify. We also believe that these benefits will justify the minimal costs of compliance.

V. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis, or FRFA, has been prepared in accordance with the Regulatory Flexibility Act.[139] This FRFA relates to rule amendments adopted under the Exchange Act that revise the disclosure requirements with respect to registrants' equity compensation plans. Specifically, the amendments revise Item 201 of Regulation S–B, Item 201 of Regulation S–K and Form 10–K, Form 10–KSB, Exchange Act Rule 14a–3 and Schedule 14A under the Exchange Act to require tabular disclosure of the number and weighted-average exercise price of all outstanding options, warrants and rights under a registrant's equity compensation plans, as well as the number of securities remaining available for future issuance under these plans and certain related information. Disclosure is to be made in two categories: plans that have been approved by security holders and plans that have not been approved by security holders. Registrants must include the table in their annual reports on Form 10–K or 10–KSB, as well as in their proxy or information statements in years when they are submitting a compensation plan for security holder action. Copies of most equity compensation plans will be required to be filed with us for public inspection.

A. Need for the Amendments

The increased use of equity compensation has raised investor concerns about the potential dilutive effect of a registrant's equity compensation plans, the absence of full disclosure to security holders about these plans and the adoption of many plans without the approval of security holders. These concerns may be especially acute for investors in small entities, which use equity compensation in order to attract and retain key employees and to preserve scarce cash resources.[140] The amendments enhance the quality of information available to investors about a registrant's equity compensation plans.

B. Significant Issues Raised by Public Comment

A summary of the Initial Regulatory Flexibility Analysis, or IRFA, appeared in the Proposing Release.[141] We requested comment on any aspect of the IRFA, including the number of small businesses that would be affected by the proposals, the nature of the impact, how to quantify the number of small entities that would be affected and how to quantify the impact of the proposals. We received no comment letters responding to that request.

C. Small Entities Subject to the Amendments

Exchange Act Rule 0–10[142] defines the term ''small business'' to be an issuer that, on the last day of its most recent fiscal year, has total assets of $5 million or less.[143] There are approximately 770 issuers that are subject to the reporting requirements of Section 13 of the Exchange Act that have assets of $5 million or less.[144] Only small businesses that have a reporting obligation under the Exchange Act *and* adopt or maintain an equity compensation plan will be subject to the amendments. We estimate that there are approximately 460 entities that have

[135] This estimate is based on the Letter dated April 9, 2001 from Lucent Technologies, Inc., in which the commenter estimated that providing four additional pages of disclosure to its over five million security holders would result in additional printing costs of $100,000 and additional mailing costs of $200,000. Assuming that the required disclosure consists of one additional page and that a registrant has 50,000 security holders, the registrant may incur additional costs of $750 to prepare and distribute the additional disclosure.

[136] Since all registrants are required to make the same disclosure, the amendments will impose the same dollar costs on each registrant. Accordingly, for small entities the relative burden of compliance will be higher than for large entities.

[137] This figure is based on our estimate that 60% of the actual number of registrants filing annual reports on Form 10–K or 10–KSB (14,022 registrants) maintain equity compensation plans. This estimate is made after a review of available survey data, which varies widely. For example, in its most recent study of the ''S&P Super 1,500'' (the combination of the S&P 500, the S&P MidCap 400 and the S&P SmallCap 600), the Investor Responsibility Research Center determined that, of the 1,157 companies examined, 1,142 (98.7%) awarded equity to some portion of their employees. See Investor Responsibility Research Center, *Potential Dilution—2000, The Potential Dilution from Stock Plans at the S&P Super 1,500 Companies* (2000). In contrast, a Pilot Survey conducted by the Bureau of Labor Statistics in 1999 determined that 22% of publicly-held companies offered stock options to their employees. This survey sampled 2,100 ''establishments,'' of which approximately 1 in 10 were publicly-held companies. See Bureau of Labor Statistics, *Pilot Survey on the Incidence of Stock Options in Private Industry in 1999,* (Oct. 11, 2000), available at *http://www.bls.gov/ncs/ocs/sp/ncnr0001.txt.*

[138] We arrived at this estimate by assuming that approximately 80% of these registrants will be required to provide the tabular disclosure only and 20% of these registrants will be required to describe the material features of their non-security holder-approved plans as well. See n. 90 above and the accompanying text. Thus, 80% of the registrants will incur an average annual outside counsel cost of $300 (80% of 8,400 x $300 = $2,016,000) while 20% will incur an average annual outside cost of $600 (20% of 8,400 x $600 = $1,008,000). In addition, we estimate that approximately 365 registrants with non-security holder-approved plans will incur additional printing and distribution costs of $750 each, or $273,750. See n. 135 above. The sum of these amounts averaged over 8,400 registrants equals $393.

[139] 5 U.S.C. § 603.

[140] A recent study of approximately 250 companies conducted by the National Center for Employee Ownership found that 55% of the respondents had less than 200 employees (with 17% having less than 31 employees) and that 55% of the respondents had less than $40 million in annual revenue (with 14% having annual revenues of $1.1 million or less). See National Center for Employee Ownership, *An Overview of How Companies are Granting Stock Options* (2001).

[141] See the Proposing Release at Section V.

[142] 17 CFR 240.0–10(c).

[143] A similar definition is provided under Securities Act Rule 157 [17 CFR 230.157].

[144] This estimate is based on filings with the Commission.

total assets of $5 million or less that meet this criteria.[145]

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The amendments impose new reporting requirements by requiring specific annual disclosure by all registrants, including ''small businesses,'' concerning their equity compensation plans in effect as of the end of the most recently completed fiscal year. Consequently, the amendments will increase the costs associated with the preparation of the disclosure included in annual reports on Form 10–K or 10–KSB and furnished to security holders in proxy and information statements. Specifically, the amendments require registrants to disclose the number and weighted-average exercise price of all outstanding options, warrants and rights under a registrant's equity compensation plans, as well as the number of securities remaining available for future issuance under these plans and certain related information. Disclosure is to be made in two categories: plans that have been approved by security holders and plans that have not been approved by security holders. Since this information can be derived from information that is readily available to registrants through the routine administration of their equity compensation programs, we do not expect these additional costs to be significant.

We do not anticipate that the amendments will impose any significant recordkeeping requirements in addition to those already required under the Exchange Act. The information to be disclosed can be derived from information that is readily available to registrants through the routine administration of their equity compensation programs. All registrants with equity compensation plans have various legal, financial reporting and other disclosure obligations that require maintenance of information regarding these plans similar to that covered by the amendments.

E. Agency Action To Minimize Effect on Small Entities

As required by Sections 603 and 604 of the Regulatory Flexibility Act, we have considered alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered several alternatives, including the following:

- Establishing different compliance and reporting requirements that take into account the resources of small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

Overall, the amendments are intended to assist investors in understanding a registrant's equity compensation policies and practices. The quality of information available about the potential dilutive effect of a registrant's equity compensation plans is relevant to investors in both small and large entities. Different compliance or reporting requirements for small entities are not appropriate because small entities may use equity compensation plans to a greater extent than large entities to preserve scarce cash resources.[146] In addition, it is not feasible to further clarify, consolidate or simplify the amendments for small entities because the amendments require only minimal information about a registrant's equity compensation plans. Because uniformity and comparability are important, especially where small entities have equity compensation plans, we do not propose to use performance standards to specify different requirements for small entities. Finally, we believe that the amendments should apply equally to all entities required to disclose information, in order to safeguard protection of all investors.

VI. Analysis of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[147] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule will have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. We have considered the amendments in light of the standards in Section 23(a)(2). We requested comment on any anti-competitive effects of the proposals. We received no comment letters responding to that request.

The amendments may have a disparate impact on registrants that use equity compensation extensively, such as smaller firms or registrants in certain industry sectors (such as high-technology companies), as compared to registrants with limited or no equity compensation programs.[148] Thus, we are sensitive to the concern that registrants with a greater compliance obligation will be placed at a competitive disadvantage. In addition, several commenters, while not specifically addressing this issue, did argue that the new disclosure would be duplicative of information currently required to be included in registrants' audited financial statements. In response to these concerns, we have revised the proposals to eliminate redundant requirements and to streamline the compliance process. Because these changes should enable registrants to keep compliance costs low, we do not believe that the amendments will impose a significantly disproportionate cost on smaller firms or high-technology companies.

Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act[149] require us, when engaging in rulemaking requiring us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. We have considered the amendments in light of the standards in these provisions. We requested comment on how the proposals would affect efficiency, competition and capital formation. We received no comment letters responding to that request.

It is widely believed that equity compensation, particularly instruments such as stock options, can be used to align the interests of employees and security holders, thereby promoting effective corporate governance.[150] Because an equity compensation plan may necessarily have an unintended dilutive effect on the existing ownership interests, however, it is important that the plan be closely monitored to ensure that its cost is commensurate with its benefit to investors. The amendments are intended to enhance the quality of disclosure about registrants' equity compensation programs that is available

[145] This figure is based on our estimate that 60% of the registrants that file an annual report on either Form 10–K or 10–KSB maintain equity compensation plans and will be required to provide the new tabular disclosure. See n. 87 above.

[146] See n. 140 above.

[147] 15 U.S.C. 78w(a).

[148] See n. 140 above.

[149] 15 U.S.C. § 77b(b) and 78c(f).

[150] See, for example, the American Benefits Council, *Taking Stock in Employee Benefits: The Democratization of Broad-Based Stock Plans* (Feb. 2001), at 2–3.

to investors. Increasing the transparency of these programs should result in better monitoring by investors. This should result in better corporate governance, thereby increasing the efficiency of the organization. This should promote capital formation.

VII. Statutory Authority

The amendments contained in this release are being adopted under the authority set forth in Sections 3(b) and 19(a) of the Securities Act and Sections 12, 13, 14(a), 15(d) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 228, 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of Rule Amendments

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 1. The general authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll,* 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11, unless otherwise noted.

■ 2. Section 228.201 is amended by adding paragraph (d) before the *Instruction* to read as follows:

§ 228.201 (Item 201) Market for Common Equity and Related Stockholder Matters.

* * * * *

(d) *Securities authorized for issuance under equity compensation plans.* (1) In the following tabular format, provide the information specified in paragraph (d)(2) of this Item as of the end of the most recently completed fiscal year with respect to compensation plans (including individual compensation arrangements) under which equity securities of the small business issuer are authorized for issuance, aggregated as follows:

(i) All compensation plans previously approved by security holders; and

(ii) All compensation plans not previously approved by security holders.

EQUITY COMPENSATION PLAN INFORMATION

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
	(a)	(b)	(c)
Equity compensation plans approved by security holders			
Equity compensation plans not approved by security holders			
Total			

(2) The table shall include the following information as of the end of the most recently completed fiscal year for each category of equity compensation plan described in paragraph (d)(1) of this Item:

(i) The number of securities to be issued upon the exercise of outstanding options, warrants and rights (column (a));

(ii) The weighted-average exercise price of the outstanding options, warrants and rights disclosed pursuant to paragraph (d)(2)(i) of this Item (column (b)); and

(iii) Other than securities to be issued upon the exercise of the outstanding options, warrants and rights disclosed in paragraph (d)(2)(i) of this Item, the number of securities remaining available for future issuance under the plan (column (c)).

(3) For each compensation plan under which equity securities of the small business issuer are authorized for issuance that was adopted without the approval of security holders, describe briefly, in narrative form, the material features of the plan.

Instructions to Paragraph (d).

1. Disclosure shall be provided with respect to any compensation plan and individual compensation arrangement of the small business issuer (or parent, subsidiary or affiliate of the small business issuer) under which equity securities of the small business issuer are authorized for issuance to employees or non-employees (such as directors, consultants, advisors, vendors, customers, suppliers or lenders) in exchange for consideration in the form of goods or services as described in Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation,* or any successor standard. No disclosure is required with respect to:

a. Any plan, contract or arrangement for the issuance of warrants or rights to all security holders of the small business issuer as such on a pro rata basis (such as a stock rights offering) or

b. Any employee benefit plan that is intended to meet the qualification requirements of Section 401(a) of the Internal Revenue Code (26 U.S.C. 401(a)).

2. For purposes of this paragraph, an ''individual compensation arrangement'' includes, but is not limited to, the following: a written compensation contract within the meaning of ''employee benefit plan'' under § 230.405 of this chapter and a plan (whether or not set forth in any formal document) applicable to one person as provided under Item 402(a)(7)(ii) of Regulation S–B (§ 228.402(a)(7)(ii)).

3. If more than one class of equity security is issued under its equity compensation plans, a small business issuer should aggregate plan information for each class of security.

4. A small business issuer may aggregate information regarding individual compensation arrangements with the plan information required under paragraph (d)(1)(i) and (ii) of this item, as applicable.

5. A small business issuer may aggregate information regarding a compensation plan assumed in connection with a merger, consolidation or other acquisition transaction pursuant to which the small business issuer may make subsequent grants or awards of its equity securities with the plan information required under paragraph (d)(1)(i) and (ii) of this Item, as applicable. A small business issuer shall disclose on an aggregated basis in a footnote to the table the information required under paragraph (d)(2)(i) and (ii) of this Item with respect to any individual options, warrants or rights assumed in connection with a merger, consolidation or other acquisition transaction.

6. To the extent that the number of securities remaining available for future issuance disclosed in column (c) includes securities available for future issuance under any compensation plan or individual compensation arrangement other than upon the exercise of an option, warrant or right, disclose the number of securities and type of

plan separately for each such plan in a footnote to the table.

7. If the description of an equity compensation plan set forth in a small business issuer's financial statements contains the disclosure required by paragraph (d)(3) of this Item, a cross-reference to such description will satisfy the requirements of paragraph (d)(3) of this Item.

8. If an equity compensation plan contains a formula for calculating the number of securities available for issuance under the plan, including, without limitation, a formula that automatically increases the number of securities available for issuance by a percentage of the number of outstanding securities of the small business issuer, a description of this formula shall be disclosed in a footnote to the table.

9. Except where it is part of a document that is incorporated by reference into a prospectus, the information required by this paragraph need not be provided in any registration statement filed under the Securities Act.

* * * * *

■ 3. Section 228.601 is amended by redesignating paragraph (b)(10)(ii)(B) as paragraph (b)(10)(ii)(C) and by adding new paragraph (b)(10)(ii)(B) to read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

(b) *Description of Exhibits* * * *

(10) *Material Contracts* * * *

(ii) * * *

(B) Any compensatory plan, contract or arrangement adopted without the approval of security holders pursuant to which equity may be awarded, including, but not limited to, options, warrants or rights (or if not set forth in any formal document, a written description thereof), in which any employee (whether or not an executive officer of the small business issuer) participates shall be filed unless immaterial in amount or significance. A compensation plan assumed by a small business issuer in connection with a merger, consolidation or other acquisition transaction pursuant to which the small business issuer may make further grants or awards of its equity securities shall be considered a compensation plan of the small business issuer for purposes of the preceding sentence.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 4. The general authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), and 80b–11, unless otherwise noted.

* * * * *

■ 5. The authority citation following § 229.201 is removed.

■ 6. Section 229.201 is amended by adding paragraph (d) before the *Instructions to Item 201* to read as follows:

§ 229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.

* * * * *

(d) *Securities authorized for issuance under equity compensation plans.* (1) In the following tabular format, provide the information specified in paragraph (d)(2) of this Item as of the end of the most recently completed fiscal year with respect to compensation plans (including individual compensation arrangements) under which equity securities of the registrant are authorized for issuance, aggregated as follows:

(i) All compensation plans previously approved by security holders; and

(ii) All compensation plans not previously approved by security holders.

EQUITY COMPENSATION PLAN INFORMATION

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
	(a)	(b)	(c)
Equity compensation plans approved by security holders			
Equity compensation plans not approved by security holders			
Total.			

(2) The table shall include the following information as of the end of the most recently completed fiscal year for each category of equity compensation plan described in paragraph (d)(1) of this Item:

(i) The number of securities to be issued upon the exercise of outstanding options, warrants and rights (column (a));

(ii) The weighted-average exercise price of the outstanding options, warrants and rights disclosed pursuant to paragraph (d)(2)(i) of this Item (column (b)); and

(iii) Other than securities to be issued upon the exercise of the outstanding options, warrants and rights disclosed in paragraph (d)(2)(i) of this Item, the number of securities remaining available for future issuance under the plan (column (c)).

(3) For each compensation plan under which equity securities of the registrant are authorized for issuance that was adopted without the approval of security holders, describe briefly, in narrative form, the material features of the plan.

Instructions to Paragraph (d).

1. Disclosure shall be provided with respect to any compensation plan and individual compensation arrangement of the registrant (or parent, subsidiary or affiliate of the registrant) under which equity securities of the registrant are authorized for issuance to employees or non-employees (such as directors, consultants, advisors, vendors, customers, suppliers or lenders) in exchange for consideration in the form of goods or services as described in Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation,* or any successor standard. No disclosure is required with respect to:

a. Any plan, contract or arrangement for the issuance of warrants or rights to all security holders of the registrant as such on

a pro rata basis (such as a stock rights offering) or

b. Any employee benefit plan that is intended to meet the qualification requirements of Section 401(a) of the Internal Revenue Code (26 U.S.C. 401(a)).

2. For purposes of this paragraph, an ''individual compensation arrangement'' includes, but is not limited to, the following: a written compensation contract within the meaning of ''employee benefit plan'' under § 230.405 of this chapter and a plan (whether or not set forth in any formal document) applicable to one person as provided under Item 402(a)(7)(ii) of Regulation S–K (§ 229.402(a)(7)(ii)).

3. If more than one class of equity security is issued under its equity compensation plans, a registrant should aggregate plan information for each class of security.

4. A registrant may aggregate information regarding individual compensation arrangements with the plan information required under paragraph (d)(1)(i) and (ii) of this Item, as applicable.

5. A registrant may aggregate information regarding a compensation plan assumed in connection with a merger, consolidation or other acquisition transaction pursuant to which the registrant may make subsequent grants or awards of its equity securities with the plan information required under paragraph (d)(1)(i) and (ii) of this Item, as applicable. A registrant shall disclose on an aggregated basis in a footnote to the table the information required under paragraph (d)(2)(i) and (ii) of this Item with respect to any individual options, warrants or rights assumed in connection with a merger, consolidation or other acquisition transaction.

6. To the extent that the number of securities remaining available for future issuance disclosed in column (c) includes securities available for future issuance under any compensation plan or individual compensation arrangement other than upon the exercise of an option, warrant or right, disclose the number of securities and type of plan separately for each such plan in a footnote to the table.

7. If the description of an equity compensation plan set forth in a registrant's financial statements contains the disclosure required by paragraph (d)(3) of this Item, a cross-reference to such description will satisfy the requirements of paragraph (d)(3) of this Item.

8. If an equity compensation plan contains a formula for calculating the number of securities available for issuance under the plan, including, without limitation, a formula that automatically increases the number of securities available for issuance by a percentage of the number of outstanding securities of the registrant, a description of this formula shall be disclosed in a footnote to the table.

9. Except where it is part of a document that is incorporated by reference into a prospectus, the information required by this paragraph need not be provided in any registration statement filed under the Securities Act.

* * * * *

■ 7. Section 229.601 is amended by redesignating paragraph (b)(10)(iii)(B) as paragraph (b)(10)(iii)(C) and by adding new paragraph (b)(10)(iii)(B) to read as follows:

§ 229. 601 (Item 601) Exhibits.

* * * * *

(b) *Description of Exhibits* * * *

(10) *Material Contracts* * * *

(iii) * * *

(B) Any compensatory plan, contract or arrangement adopted without the approval of security holders pursuant to which equity may be awarded, including, but not limited to, options, warrants or rights (or if not set forth in any formal document, a written description thereof), in which any employee (whether or not an executive officer of the registrant) participates shall be filed unless immaterial in amount or significance. A compensation plan assumed by a registrant in connection with a merger, consolidation or other acquisition transaction pursuant to which the registrant may make further grants or awards of its equity securities shall be considered a compensation plan of the registrant for purposes of the preceding sentence.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 8. The general authority citation for Part 240 is revised to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

■ 9. The authority citation following § 240.14a–3 is removed.

■ 10. Section 240.14a–3 is amended by revising paragraph (b)(9) to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

(9) The report shall contain the market price of and dividends on the registrant's common equity and related security holder matters required by Item 201(a), (b) and (c) of Regulation S–K (§ 229.201(a), (b) and (c) of this chapter).

* * * * *

■ 11. In § 240.14a–101, amend Item 10 of Schedule 14A by adding paragraph (c) before the undesignated heading *Instructions* and revise Item 14(d)(4) of Schedule 14A to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 10. Compensation Plans. * * *

* * * * *

(c) *Information regarding plans and other arrangements not subject to security holder action.* Furnish the information required by Item 201(d) of Regulation S–K (§ 229.201(d) of this chapter).

Instructions to paragraph (c).

1. If action is to be taken as described in paragraph (a) of this Item with respect to the approval of a new compensation plan under which equity securities of the registrant are authorized for issuance, information about the plan shall be disclosed as required under paragraphs (a) and (b) of this Item and shall not be included in the disclosure required by Item 201(d) of Regulation S–K (§ 229.201(d) of this chapter). If action is to be taken as described in paragraph (a) of this Item with respect to the amendment or modification of an existing plan under which equity securities of the registrant are authorized for issuance, the registrant shall include information about securities previously authorized for issuance under the plan (including any outstanding options, warrants and rights previously granted pursuant to the plan and any securities remaining available for future issuance under the plan) in the disclosure required by Item 201(d) of Regulation S–K (§ 229.201(d) of this chapter). Any additional securities that are the subject of the amendments or modification of the existing plan shall be disclosed as required under paragraphs (a) and (b) of this Item and shall not be included in the Item 201(d) disclosure.

* * * * *

Item 14. Mergers, consolidations, acquisitions and similar matters. * * *

* * * * *

(d) *Information about parties to the transaction: registered investment companies and business development companies.* * * *

* * * * *

(4) Information required by Item 201(a), (b) and (c) of Regulation S–K (§ 229.201(a), (b) and (c) of this chapter), market price of and dividends on the registrant's common equity and related stockholder matters;

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 12. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

* * * * *

■ 13. By amending Form 10–K (referenced in § 249.310) by revising Item 12 of Part III to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Part III

* * * * *

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Furnish the information required by Item 201(d) of Regulation S–K (§ 229.201(d) of this chapter) and by Item 403 of Regulation S–K (§ 229.403 of this chapter).

* * * * *

■ 12. By amending Form 10–KSB (referenced in § 249.310b) by revising Item 11 of Part III to read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

Part III

* * * * *

Item 11. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Furnish the information required by Item 201(d) of Regulation S–B and by Item 403 of Regulation S–B.

* * * * *

By the Commission.

Dated: December 21, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–32078 Filed 12–31–01; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday,
January 2, 2002

Part VII

Department of Transportation

14 CFR Part 330
Procedures for Compensation of Air Carriers; Final Rule and Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 330

[Docket OST–2001–10885]

RIN 2105–AD06

Procedures for Compensation of Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; response to comments.

SUMMARY: On September 22, 2001, President Bush signed into law the Air Transportation Safety and System Stabilization Act (''the Act''). The Act makes available to the President funds to compensate air carriers, as defined in the Act, for direct losses suffered as a result of any Federal ground stop order and incremental losses beginning September 11, 2001, and ending December 31, 2001, resulting from the September 11 terrorist attacks on the United States. In order to fulfill Congress' intent to expeditiously provide compensation to eligible air carriers, the Department used procedures set out in Program Guidance Letters to make initial estimated payments amounting to about 50 percent of the authorized funds. On October 29, 2001, the Department published a final rule and request for comments establishing application procedures for air carriers interested in requesting compensation under this statute. This document makes amendments to the rule and otherwise responds to the comments the Department received.

DATES: This rule is effective January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Steven Hatley, U.S. Department of Transportation, Office of International Aviation, 400 7th Street, SW., Room 6402, Washington, DC 20590. Telephone 202–366–1213.

SUPPLEMENTARY INFORMATION: As a consequence of the terrorist attacks on the United States on September 11, 2001, the U.S. commercial aviation industry suffered severe financial losses. These losses placed the financial survival of many air carriers at risk. Acting rapidly to preserve the continued viability of the U.S. air transportation system, President Bush sought and Congress enacted the Air Transportation Safety and System Stabilization Act (''the Act''), Public Law 107–42.

Under section 101(a)(2)(A–B) of the Act, a total of $5 billion in compensation is provided for ''direct losses incurred beginning on September 11, 2001, by air carriers as a result of any Federal ground stop order issued by the Secretary of Transportation or any subsequent order which continues or renews such stoppage; and the incremental losses incurred beginning September 11, 2001 and ending December 31, 2001, by air carriers as a direct result of such attacks.'' The Department of Transportation previously disbursed initial estimated payments of nearly $2.5 billion of the $5 billion amount that Congress authorized, using procedures set forth in the Department's Program Guidance Letters that were widely distributed and posted on the Department's Web site.

On October 29, 2001 (66 FR 54616), the Department published in the **Federal Register** a final rule and request for comments to establish procedures for air carriers who had received or wished to receive compensation under the Act. The rule covered such subjects as eligibility, deadlines for application, information and forms required of applicants, and audit requirements. The Department has received submissions from many carriers pursuant to this rule and is continuing to process requests for compensation.

The Department received 18 comments on the rule during the comment period; correspondence, memoranda of meetings, and late filed comments, have also been entered into the docket. The following portion of the preamble summarizes the comments that we received and describes the Department's responses to those comments, including, where appropriate, amendments that the Department is making to the October 29 final rule.

Wet Lease Issues

Several commenters disagreed with the rule's provisions concerning how RTMs are counted in cargo ''wet lease'' situations. In a wet lease, one air carrier (the lessor) provides an aircraft, crew, maintenance, and insurance (ACMI) for another air carrier (the lessee). The rule, consistent with an existing regulatory definition of an RTM and Bureau of Transportation Statistics (BTS) guidance concerning it, provided that for purposes of the statutory formula for determining the proper amount of compensation for which an air carrier is eligible, RTMs would be attributed to the lessee who had reported the RTMs to the Department. This approach, the preamble to the rule said, was in keeping with the statutory direction to rely on RTMs ''as reported to the Secretary.''

Comments on this subject included letters from Atlas Air, Southern Air, Cargo Airline Association (CAA), Custom Air Transport (CAT), National Air Carrier Association (NACA), Air Transport Association (ATA), Congressman James P. McGovern, and a group of six members of the Florida Congressional delegation. They were in agreement that the Department's approach to this issue should be changed.

These commenters asserted that there would not be a ''double-counting'' situation to fear by granting wet lessors compensation. Atlas claims this is because ''scope clauses in labor agreements typically prevent U.S. carriers from utilizing ACMI services''; thus, ''virtually all ACMI business is with foreign carriers, which by definition are not entitled to compensation under the Act.'' Consequently, they said, the Department's rule would unreasonably preclude any compensation for certain flights, since foreign carrier lessees are not eligible for compensation and the lessors could not count the RTMs involved for compensation purposes.

These commenters also made the point that the Department's rule elsewhere emphasizes (in denying compensation to indirect air carriers) the role of the direct air carrier in actually flying the aircraft and in fact specifies that RTMs must be flown by the air carrier submitting the claim. In this context, wet lessors better meet these standards than their lessees, they said, since the lessor is the party that actually flies the aircraft.

A number of these comments said that it was unreasonable for the Department to rely on the way RTMs are reported to the Department on the BTS ''Form 41,'' since they viewed this report as being provided for unrelated purposes. In addition, some pointed out, the Department had previously proposed a rule that would change reporting requirements so that operating carriers (i.e., the lessor in a wet lease situation) would report the RTMs.

Some of these comments referred to the ''other auditable measure'' language in the Act, saying that this language provided greater flexibility than the Department had provided in the rule. However, none of the commenters suggested any other auditable measures. Instead, several requested that they be able to count what they believed were their own RTMs for operating as wet lessors, even though these RTMs had previously been reported to the Department by the lessees.

In a late-filed comment, CAT urged that the Department reverse its position

that wet lessees, rather than wet lessors, be credited with RTMs. CAT is a wet lessor that operates flights on behalf of other U.S. carriers. CAT asserted that it is irrelevant who reports RTMs to the Department; what should be dispositive in all cases, in CAT's view, is who actually operated the flights. This is just as true in the case of situations in which U.S. carriers are the lessees as in which foreign carriers are the lessees.

In the Conference Report on the Aviation Transportation Security Act (House Report 107–296 at p. 79), the managers made the following comment on this issue:

> It is the Conferees' position that the Stabilization Act's section 103 compensation formula language, ''revenue ton miles or other auditable measure'' should be broadly construed and should not restrict compensation exclusively to revenue ton miles reported on previously filed DOT Form 41s. If Air, Crew, Maintenance, Insurance lessors can provide accurate and auditable records of their revenue-ton-miles during the relevant time period, then they should be eligible for compensation based under the Stabilization Act.''

DOT Response

Double counting—compensating more than one carrier for the same operation—is contrary to the statutory scheme of the Act. Under the Act, the amount of compensation available to a carrier is not simply a function of actual documented losses. Rather, compensation availability is limited by a formula based on the available seat-miles or revenue ton-miles (or other auditable measure) as reported by the carriers. The formula approach was clearly envisioned as a way to permit carriers to participate in a finite amount of compensation based on their proportionate market shares. Market shares are not ''shared'' due to multiple carriers participating in particular operations. Indeed, permitting two or more carriers to be compensated for the same operation would give greater weight to some operations than others, contrary to the broad and proportionate distribution principle evident from the language of both section 101 and 103.

For example, suppose carrier A and carrier B both participated in operation X. Meanwhile, carrier C flew the same amount of cargo over the same route in operation Y, without the involvement of another carrier. Both operations result in 100,000 RTMs. If double counting were permitted, operation X would generate twice as much compensation as operation Y, reducing the total pool of funds available to all carriers, depriving other carriers of the proportionate amount of compensation that Congress intended them to receive.

We would also point out that there are many forms of multiple participation in operations, such as wet leases, charters, code shares, and indirect/direct air carrier relationships. Attempting to find ways of accommodating all these situations, and the variety of types of double counting that would be involved, would not only be administratively impracticable but inevitably involve multiple inequities. Congress could not have intended such a result.

We do not agree with commenters who would disregard the role of the Department's reporting requirements (i.e., the Form 41 process) in determining the appropriate carriers to receive ''credit'' for ASMs or RTMs. Knowledge of this long-standing reporting scheme can clearly be attributed to Congress, and the Act's explicit and repeated references to ASMs and RTMs ''as reported to the Secretary'' show that Congress implicitly adopted the Department's reporting requirements. There is no evidence that Congress sought to revise these requirements or nullify them for purposes of the statutory compensation formula so that, for example, wet lessors would get credit for ASMs and RTMs while wet lessees would not.

We recognize Congress did add the term ''or other auditable measure'' to the calculus with respect to RTMs. While neither the Department nor commenters have been able to suggest what such measures might be, this addition at least stands for the proposition that Congress intended some flexibility in the way that compensation was distributed among cargo carriers. That interpretation is fortified by the Conferees' statement in House Report 107–296 as cited above, which we note was directly in support of the compensation claims of wet lessors.

Working with these principles, together with the mandates of the Act itself, we believe that the comments discussed above have some merit, and that wet lessors in some circumstances can participate in compensation payments. The primary condition to that participation is that an eligible carrier with a superior claim to RTMs under our rules has not applied for compensation. This requirement is necessary in order to avoid either double counting or the displacing of the claim of another carrier (e.g., the lessee in a wet lease situation) that Congress, through its ''as reported to the Secretary'' language, intended the Department to recognize.

Therefore, we will accept applications from wet lessors if they (1) Otherwise qualify as an air carrier; (2) identify and document their status as wet lessor, explaining thereby why they have not previously reported ASMs or RTMs for the operations in question; (3) identify the wet lessees involved in these operations; (4) document that such lessees are either ineligible for compensation or voluntarily have not and will not claim such compensation with respect to the operations in question; and (5) provide accurate and auditable records of ASMs or RTMs actually flown during the relevant time period for these operations.

We recognize that it is possible that some wet lessors either did not apply for compensation because of the way that the rule addressed this issue or would seek to amend their applications to claim additional RTMs or ASMs. We are amending the application procedures of the rule to allow carriers to do so within 14 days of the publication of this amendment.

Claims to confidentiality of information provided under this provision will be carefully scrutinized. In any situation in which the Department determines that both wet lessors and wet lessees have claimed compensation for the same operations, the Department's general rule that wet lessees report RTMs will be given effect and lessees given priority.

Indirect Air Carrier Issues

A number of commenters objected to the provision of the rule that only direct air carriers are eligible for compensation. These commenters (Emery Air Freight, CAA, BAX Global, and the Association of Air Medical Services (AAMS)) pointed out, first, that indirect air carriers are within the statutory definition of ''air carrier,'' and consequently should be eligible for compensation. These commenters disagreed with the Department's contention, in the rule's preamble, that the intent of Congress was to compensate carriers who actually operated flights. Emery added that, as an air freight forwarder, it has been recognized in DOT administrative decisions as responsible for the transportation of property, even though it did not actually operate flights.

Emery also asserted that, as a lessee for air freight transportation, it suffered losses because the direct air carriers whose aircraft it leased could not fly during the period of the Secretary's September 11 ground stop order. This is exactly the sort of loss Congress intended to compensate, Emery said.

Reporting ASMs or RTMs to the Department should not be an *eligibility* requirement, these commenters said. All air carriers should be eligible for

compensation regardless of whether the Department could calculate the ''formula cap'' for compensation using RTMs, particularly since the statute allows for ''other auditable measures'' to be used in place of RTMs.

In some cases, CAA said, indirect air carriers should get credit for the RTMs involved in cargo operations, since they ''generate'' the freight carried, contract with direct air carriers for dedicated lift which requires payment regardless of how much freight is carried, and bear the entire financial risk for the operation. Emery also said that it, rather than the direct air carriers involved, should be regarded as generating RTMs, which the direct air carrier merely reports.

BAX asserted that it is the Department's obligation to find an appropriate ''other auditable measure'' for indirect air carrier operations for carriers that do not report RTMs, though BAX did not suggest what such measures might be. BAX did suggest, however, that the flexibility given to air taxis in the rule, for whom DOT could estimate RTMs based on other data, could be given to indirect air carriers as well.

BAX dismissed the Department's concern about ''duplicating'' ASMs or RTMs, saying that such overlap between direct and indirect air carriers is not ''inherently injurious.'' BAX appears to mean that a carrier will not be able to get ''double recovery,'' though it concedes that some carriers might have their compensation reduced as a result. Emery agreed that allowing indirect air carriers to claim RTMs will not require DOT to pay more than once for a specific loss. Emery added that the parties to a contract (i.e., a direct and indirect air carrier) should be able to provide DOT the information needed to make appropriate allocations of relief.

AAMS, representing air ambulance operators, also requested that the Department provide compensation to those air ambulance operators who are indirect air carriers.

DOT Response

Much of the discussion above concerning wet lease issues also pertains to the comments on indirect air carrier issues. In particular, the Department believes that double counting is impermissible. We find nothing in the text of the statute or its legislative history suggesting that Congress meant for carriers to be able to ''share'' RTMs. Further, none of these commenters have offered a way to calculate ''other auditable measures'' that may be applicable to them in a way that is free of the problem of duplicating the claims of other carriers. (BAX's analogy to air taxis is inapposite, since air taxis have been required to construct RTM data in a manner consistent with other carriers and no duplication of data is involved.)

Nor are we persuaded by the suggestions that indirect air carrier/freight forwarders have a superior claim to RTMs that are flown with their cargo aboard. As noted above, we believe that Congress implicitly adopted the reporting requirements of the Department in the Act, and we find no suggestion that it intended to displace, as eligible for compensation under the Act, the direct air carriers that report RTMs in accordance with our rules in favor of indirect air carriers that do not.

As to comments analogizing the role of freight forwarders to that of wet lessees, there are clearly differences between the two. While both assume economic risks, a wet lessee assumes economic control and responsibility for the flight, which the freight forwarder does not. As to claims that freight forwarder operations are economically equivalent to a wet lease, if an air carrier has in fact reported RTMs to the Department as a wet lessee, then its application can be processed on that basis. We believe that the manner in which carriers have actually defined their relationships and reported the data to DOT—without regard to the economic incentive created by the availability of compensation—should be given credibility.

That said, we are deleting the provision of the rule that made indirect air carriers ineligible to apply for compensation. In order to be consistent with the approach we have taken above for wet lessors, we will accept for processing applications from indirect air carriers if they (1) Otherwise qualify as an air carrier; (2) identify and document their status as an indirect air carrier, explaining thereby why they have not previously reported ASMs or RTMs on claimed operations; (3) identify the direct air carriers involved in their operations; (4) document that such direct air carriers are either ineligible for compensation or voluntarily have not and will not claim such compensation with respect to the operations in question; and (5) provide accurate and auditable records of ASMs or RTMs actually flown during the relevant time period for these operations.

We recognize that it is possible that some indirect air carriers may not have applied for compensation in the past because the rule said that they were ineligible. We are amending the application procedures of the rule to allow indirect air carriers who did not apply previously to so do within 14 days of the publication of this amendment.

As noted above, claims to confidentiality of information provided under this provision will be carefully scrutinized. In any situation in which the Department determines that both indirect and direct air carriers have claimed compensation for the same operations, the Department's general rule that direct air carriers report RTMs will be given effect and they will be given priority.

Air Ambulance Issues

AAMS expressed concern about the provisions of the Act and the rule that based calculations of compensation for which air carriers are eligible on available seat-miles (ASMs). AAMS said that ASMs are not a good measure of the capacity of air ambulance services, because air ambulances must be staffed and ready to go on a 24-hour basis, yet fly relatively few ASMs. Given the way the statutory formula works, this would result in very little compensation being made available to air ambulance services.

In place of the ASM calculations that are used for other kinds of air carriers, AAMS recommended that the Department calculate lost volume by comparing the flight volume of August and September 2001, multiplying the difference by the average revenue per flight, and extrapolating the result to the industry as a whole. AAMS suggested that the functional equivalent of ASMs (i.e., as a measurement of capacity) could be calculated by multiplying the average number of seats in air ambulances aircraft (six) times the average speed of the aircraft (150 m.p.h.) times the hours per day it is staffed and ready (24). This, AAMS suggested, would create a reasonable approximation of the capacity of an air ambulance aircraft per day.

In the Aviation and Transportation Security Act (Pub. L. 107–71), Congress also addressed the situations of air ambulances. Section 124(d) of this statute amended section 103 of the Air Transportation Safety and System Stabilization Act. The purpose of this amendment, according to the Conference Report (House Report 107–296 at p. 79), is to ''to allow for a modified system of providing compensation to air tour operators and air ambulances to better address their needs after industry wide losses.'' The following is the text of this amendment:

(d) Compensation for Certain Air Carriers.—

(1) Set-Aside.—The President may set aside a portion of the amount of

compensation payable to air carriers under section 101(a)(2) to provide compensation to classes of air carriers, such as air tour operators and air ambulances (including hospitals operating air ambulances) for whom application of a distribution formula containing available seat miles as a factor would inadequately reflect their share of direct and incremental losses. The President shall reduce the $4,500,00,000 specified in section (b)(2)(A)(i) by the amount set aside under this subsection.

(2) Distribution of Amounts.—The President shall distribute the amount set aside under this subsection proportionally among such air carriers based on an appropriate auditable measure, as determined by the President.

Under the statutory language, use of this set-aside authority is discretionary (''The President may set aside * * *''). Neither the statute nor the Conference Report provides any guidance concerning the appropriate size of such a set-aside or the identity of any other ''classes'' of air carriers that could be included in it, if the President chooses to use the authority.

DOT Response

The Department will consider using the discretion provided by section 124(d) of the Transportation Security Act to set aside a portion of the $4.5 billion compensation available for passenger carriers for air ambulances and other classes of air carriers for whom application of an ASM-based compensation formula would inadequately reflect their share of direct and incremental losses. The Department is issuing a separate document in today's **Federal Register** requesting comment on the issue of whether we should establish a set-aside, which classes of carriers a set-aside should cover, and what method or methods should be used to allocate funds from a set-aside.

Charter Carrier Issues

NACA, representing charter air carriers, asked for changes in the data the Department collects. NACA said that Parts 2 and 4 of Form 330–A request a variety of types of information (e.g., forecast ASMs and RTMs; volume, revenue and cost information related to individual passengers; break even load factor, average length of passenger haul, departures planned, average passenger fares, and passenger yield per RPM) that are not relevant to charter air carriers' operation. Charter air carriers, NACA said, typically sell full planeload charter flights to tour operators, who in turn pay for the whole airplane by ''block hour.'' Charter revenue forecasts are based on aircraft utilization, which is the predicted monthly number of block hours the carrier expects to operate. The forecast units then become revenue and cost per block hour, rather than ASMs and RTMs.

DOT Response

The Department understands that some charter carriers may not have some of the data elements in the form the Department has asked for them. The Department has received applications from a number of such carriers, and we are working with the carriers in question to clarify information necessary to permit determinations on compensation to be made. Consequently, the Department does not believe that it is necessary to make any changes in the current rule or forms to accommodate NACA's concern. However, we will consider whether, in connection with the third increment of compensation we intend to distribute in 2002, we should change any of the data elements for charter carriers.

Accounting Issues

The American Institute of Certified Public Accountants (AICPA) recommended a number of changes in the way that the rule describes the independent audit requirements of the final rule. Rather than requiring a ''review'' of a carrier's ''forecasts,'' or an ''audited financial statement,'' AICPA suggested that DOT require carriers to perform an ''agreed-upon procedures engagement.'' This change would make the rule more consistent with accounting terms of art, AICPA said. AICPA provided a suggested draft of such agreed-upon procedures as well as technical amendments to the rule's language that would accommodate the group's concerns.

AICPA also commented concerning the rule's requirement that carriers report and support reports of losses for the period beginning September 11, 2001. Generally, AICPA said, carriers prepare financial data on a monthly, rather than a daily basis, so it would make more sense to report losses beginning September 1 rather than September 11. Also, carriers and the DOT should have access to the independent auditors' working papers on request, but the carrier should not routinely obtain and retain them. Doing the latter would be inconsistent with AICPA auditing standards, the organization asserted.

The Air Transport Association noted in its comments that it supported the AICPA's views.

DOT Response

In the interest of facilitating auditing of carriers' records, the Department will make the regulatory text changes suggested by AICPA, with minor edits. These changes in the Department's rule include adoption of the ''agreed-upon procedures engagement'' approach that AICPA suggested. However, the Department does not adopt or otherwise approve the specific agreed-upon procedures document enclosed with AICPA's comment.

In implementing the agreed-upon procedures approach, DOT will require that airlines and their accountants use procedures that are acceptable to applicants and the Department. The Department intends to issue, in the near future, guidance that will provide the essential elements of procedures that the Department will accept. As part of this process, the Department is considering guidance relating to abbreviated procedures for smaller air carriers.

Before- and After-Tax Reporting

TEM Enterprises noted that the rule requires that carriers report both ''net losses, before taxes'' and ''total net income after taxes, based on application of standard corporate income tax rates.'' TEM recommended that the Department use before-tax information in determining compensation, particularly where a carrier projected losses even before the September 11 attacks, since no tax would have been paid in that case. It would not make sense to use after-tax data except, perhaps, in the case of carriers who project having taxable income at the end of their tax years. TEM also objected to the possibility that the reference to ''standard corporate tax rates'' would mean that the Department would uniformly apply a 34 percent tax rate against a carrier's projected net income.

AICPA also asked for clarification on whether compensation will be based on pre-tax or net income after taxes, and on what is meant by the rule's reference to ''standard corporate income tax rates.''

DOT Response

The Department has determined, as the result of reviewing both compensation applications and comments to the docket for this rule, that the Department will rely on pre-tax data for purposes of determining carriers' losses. Consequently, issues concerning use of after-tax data, including the appropriate corporate tax rate to apply, are moot. We have deleted the after-tax income lines from the reporting forms in Appendices A–C of the regulation.

Documentation of pre-September 11 Forecasts

TEM Enterprises and Custom Air Transport made similar comments concerning the rule's requirement that carriers submit documentation that pre-September 11 forecasts were, in fact, completed before September 11. The problem, they said, was that carriers such as themselves do not routinely prepare forecasts of the kind contemplated by the rule. They could produce, for purposes of their applications, they said, detailed forecasts based on information existing before September 11, but these forecasts were prepared after September 11. It would be unreasonable, they said, to exclude carriers from compensation because their normal business practices before September 11 did not involve preparing detailed forecasts. Like air taxis, some other air carriers should be given flexibility to make a good faith effort to categorize their revenues and expenses according to the rule's forms.

DOT Response

The Department believes that it is fair to accommodate the situation of carriers that did not prepare actual forecasts before September 11. In reviewing applications that have been submitted, the Department has accepted some carriers' estimates of pre-September 11 expectations for their performance, based on historical data, in lieu of a forecast actually made before that date. As a matter of interpretation, the Department will continue this practice. While the Department will scrutinize the carrier's data to make sure the estimates of expectations are reasonable, the Department will not exclude carriers in this category from eligibility for compensation.

Other Issues

Worldwide Flight Services, an aviation services firm that provides ramp, passenger, cargo, maintenance, container leasing, and fueling services, commented that it has suffered significant losses as the result of the September 11 attacks. The company is not receiving its expected revenue because carrier customers operating fewer flights are using their services less. Worldwide asserted it is not an indirect air carrier and that its unique position and the services it provides to carriers should result in its becoming eligible for compensation. Generally, Worldwide believes its services are vital to the flights of aircraft.

If its operations stopped tomorrow, Worldwide said, many flights could not operate because essential services would not be provided, especially in smaller communities. According to Worldwide, in view of the Act's mandate that the Secretary take appropriate action to ensure the continuation of scheduled air service to small communities, the Department should compensate the company. In addition, acccording to worldwide, if Worldwide stopped providing its service, there would be interruptions of mail deliveries.

ATA expressed concern about the provision that carriers must provide all requested information with their applications or face rejections of their applications by the Department. This requirement is too stringent, in ATA's view, particularly since carriers may be unable to meet precisely some of the rule's information requirements. For example, carriers may well be unable to provide an auditable forecast and actual losses for the September 11–30 period, since they do not keep records in a daily or weekly, as opposed to monthly, fashion. Like AICPA, ATA recommended that the rule's information collection requirements relate to the entire month of September.

Finally, ATA disagreed with the rule's requirement that independent auditors review carriers' forecasts for accuracy. This, ATA said, would be difficult given the variation among carriers' forecasting methods. Instead, the auditors should certify that the forecast submitted to DOT was the carrier's most recently available forecast prior to September 11.

DOT Response

The events of September 11 had serious economic effects on a wide variety of businesses. For example, airport concessionaires, hotels and resorts, and other tourism-related businesses appear to have lost substantial amounts of money. We do not doubt that an aviation services company like Worldwide may have suffered significant financial losses as the result of the September 11 attacks, and we recognize that firms like Worldwide can play an important role in the aviation industry.

Nevertheless, Congress provided compensation in the Act only to air carriers. Worldwide is not only not an indirect air carrier; it is not an air carrier at all, as defined in the Act. We do not have the legal discretion to provide compensation to parties that are not air carriers, even though doing so could help to achieve other purposes of the Act, such as maintaining service to small communities.

The Act requires losses to be calculated from September 11, not September 1. The Department cannot assume that a forecast pertaining to all of September will permit an accurate calculation of losses pertaining to September 11–30. Certainly, merely pro-rating data for the entire month as a means of estimating losses for September 11–30 would not be an accurate method for doing so. It is appropriate and possible, in the Department's view, for carriers—even those who did not originally structure their forecasts in this fashion—to break out data pertaining to September 1–10 and September 11–30, respectively.

As noted in the response to the AICPA comment, DOT is modifying audit requirements and will rely on ''agreed-upon procedures'' as distinct from a formal ''review'' or ''audit'' of carrier information. This change adequately responds to ATA's comments on this point. We do not believe it would be adequate to have an auditor merely attest to the recency of a carrier's documents. To ensure that the Department distributes funds in accordance with Congress' direction, auditors need to consider the accuracy of the substance of this information.

Regulatory Analyses and Notices

This rule is an economically significant rule under Executive Order 12886, since it will facilitate the distribution of more than a billion dollars into the economy during the 12-month period following its issuance. Because of the need to move quickly to provide compensation to air carriers for the purpose of maintaining a safe, efficient, and viable commercial aviation system in the wake of the events of September 11, 2001, we are not required to provide an assessment of the potential cost and benefits of this regulatory action. The Department has determined that this rule is being issued in an emergency situation, within the meaning of Section 6(a)(3)(D) of Executive Order 12866. However, this impact is expected to be a favorable one: making these funds available to air carriers to compensate them for losses resulting from the terrorist attacks of September 11. In accordance with Section 6(a)(3)(D), this rule was submitted to the Office of Management and Budget for a brief review.

Because a notice of proposed rulemaking is not required for this rulemaking under 5 U.S.C. 553, we are not required to prepare a regulatory flexibility analysis under 5 U.S.C. 604. However, we do note that this rule may have a significant economic effect on a substantial number of small entities. Among the entities in question are air taxis, as well as some commuters and small certificated air carriers. In

analyzing small entity impact for purposes of the Regulatory Flexibility Act, we believe that, to the extent that the rule impacts small air carriers, the impact will be a favorable one, since it will consist of receiving compensation. We have facilitated the participation of small entities in the program by allowing a longer application period for air taxis, which are generally the smallest carriers covered by this rule and which do not otherwise report traffic or financial data to the Department. The Department has also concluded that this rule does not have sufficient Federalism implications to warrant the consultation requirements of Executive Order 13132.

We are making this rule effective immediately, without prior opportunity for public notice and comment. Because of the need to move quickly to provide compensation to air carriers for the purpose of maintaining a safe, efficient, and viable commercial aviation system in the wake of the events of September 11, 2001, prior notice and comment would be impractical, unnecessary, and contrary to the public interest. Consequently, prior notice and comment under 5 U.S.C. 553 and delay of the effective date under 5 U.S.C. 801, *et seq.*, are not being provided. On the same basis, we have determined that there is good cause to make the rule effective immediately, rather than in 30 days. We are providing for a 14-day comment period following publication of the rule, however. The Department will subsequently respond to comments we receive.

The Office of Management and Budget has approved the information collection requirements of this rule, with Control Number 2105–0546.

List of Subjects in 14 CFR Part 330

Air carriers, Grant programs—transportation, Reporting and recordkeeping requirements.

Issued this 26th day of December, 2001, at Washington, DC.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

■ For the reasons set forth in the preamble, the Department amends 14 CFR Part 330 as follows:

PART 330—PROCEDURES FOR COMPENSATION OF AIR CARRIERS

■ 1. The authority citation for Part 330 is revised to read as follows:

Authority: Pub. L. 107–42, 115 Stat. 230 (49 U.S.C. 40101 note); sec. 124(d), Pub. L. 107–71, 115 Stat. 631 (49 U.S.C. 40101 note).

■ 2. Amend § 330.7 by revising paragraph (c) to read as follows:

§ 330.7 How much of an eligible air carrier's estimated compensation will be distributed under this part?

* * * * *

(c) If, as an air carrier, you are able to submit data, subsequent to your application under this part but before December 31, 2001, demonstrating and documenting conclusively that you have incurred actual losses as defined in section 101(a)(2) of the Act that exceed the amount of compensation for which you demonstrate you are eligible under the formula of section 103(b)(2) of the Act, the Department may disburse to you, without waiting for a submission in Calendar Year (CY) 2002, the remainder of the formula amount of compensation for which you are eligible.

(1) A carrier that requests a final installment before December 31, 2001 must submit its claim of actual losses for the period of the claim, a forecast for the same period that was prepared before September 11, 2001, and an independent public accountant's report based on the performance of agreed-upon procedures approved by the Department of Transportation with respect to the carrier's forecasts and actual results. The independent public accountant's engagement must be performed in accordance with generally accepted professional standards applicable to agreed-upon procedures engagements.

(2) The consideration of requests for final payment before December 31, 2001 is contingent upon the establishment by the Department of a fixed comprehensive universe of ASMs and RTMs for all eligible air carriers to be used as the basis of the final compensation formula for all eligible air carriers as established in the Act.

§ 330.11 [Amended]

■ 3. Amend § 330.11 by removing and reserving paragraph (b).

■ 4. Amend § 330.21 by adding new paragraphs (d) and (e), to read as follows:

§ 330.21 When must air carriers apply for compensation?

* * * * *

(d) Notwithstanding any other provision of this section, if you are an eligible air carrier that did not submit an application or wishes to amend its application, you may do so by January 16, 2002 if you are one of the following:

(1) An indirect air carrier which did not file an application because indirect air carriers were formerly ineligible to apply for compensation; or

(2) A wet lessor that either did not file an application, or submitted fewer ASMs or RTMs with its application than it now believes can be counted for compensation purposes, because this rule formerly limited the ASMs or RTMs that you could submit.

(e) If you are submitting a new or amended application under paragraph (d) of this section, you must include a signed statement, under penalty of perjury, that you are submitting the new or amended application for the reason stated in paragraph (d)(1) or (d)(2) of this section.

■ 5. Revise § 330.31 to read as follows:

§ 330.31 What data must air carriers submit concerning ASMs or RTMs?

(a) Except as provided in paragraph (d) of this section, if you are applying for compensation as a passenger or combination passenger/cargo carrier, you must have submitted your August 2001 total completed ASM report to the Department for your system-wide air service (e.g., scheduled, non-scheduled, foreign, and domestic).

(b) Except as provided in paragraph (d) of this section, if you are applying for compensation as an all-cargo carrier, you must have submitted your RTM reports to the Department for the second calendar quarter of 2001.

(c) In calculating and submitting ASMs and RTMs under paragraphs (a) and (b) of this section, there are certain things you must not do:

(1) Except at the direction of the Department, or to correct an error that you document to the Department, you must not alter the ASM or RTM reports you earlier submitted to the Department. Your ASMs or RTMs for purposes of this part are as you have reported them to the Department according to existing standards, requirements, and methodologies established by the Office of Airline Information (Bureau of Transportation Statistics).

(2) You must not include ASMs or RTMs resulting from operations by your code-sharing or alliance partners.

(3) You must not include ASMs or RTMs that are reported by or attributable to flights by another carrier.

(d) If you have not previously reported ASMs or RTMs as provided in paragraphs (a) and (b) of this section for a given operation or operations, you may submit your calculation of ASMs or RTMs to the Department with your application. You must certify the accuracy of this calculation and submit with your application the data and assumptions on which the calculation is based. After reviewing your submission, the Department may modify or reject your calculation.

(1) If you are a direct air carrier that has operated your aircraft for a lessee (i.e., a wet lease, or aircraft, crew, maintenance, and insurance (ACMI)

operation), you may submit your calculation of ASMs or RTMs for these flights. Your submission must include the following elements:

(i) Documentation that you otherwise qualify as an air carrier;

(ii) Documentation that you are a wet lessor, and an explanation of why you did not previously report ASMs or RTMs for the operations in question;

(iii) Documentation of the identify of the wet lessees involved in these operations;

(iv) Documentation that such lessees are either ineligible for compensation or voluntarily have not and will not claim such compensation with respect to the operations in question; and

(v) Accurate and auditable records of ASMs or RTMs actually flown during the relevant time period for these operations.

(2) If you are an indirect air carrier, you may submit your calculation of ASMs or RTMs for flights that direct air carriers have operated for you under contract or other arrangement. Your submission must include the following elements:

(i) Documentation that you otherwise qualify as an air carrier;

(ii) Documentation that you are an indirect air carrier, and an explanation of why you did not previously report ASMs or RTMs for the operations in question;

(iii) Documentation of the identify of the direct air carriers involved in these operations;

(iv) Documentation that such direct air carriers are either ineligible for compensation or voluntarily have not and will not claim such compensation with respect to the operations in question; and

(v) Accurate and auditable records of ASMs or RTMs actually flown during the relevant time period for these operations.

■ 6. Amend § 330.35 by revising paragraph (a)(4) to read as follows:

§ 330.35 What records must carriers retain?

* * * * *

(a) * * *

(4) You must agree to have your independent public accountant retain all reports, working papers, and supporting documentation pertaining to the agreed-upon procedures engagement conducted by your independent public accountant under the requirements of this part for a period of five years. The accountant must make this information available for audit and examination by representatives of the Department of Transportation (including the Office of the Inspector General), the Comptroller General of the United States, or other Federal agencies.

* * * * *

■ 7. Amend § 330.37 by revising paragraph (b) to read as follows:

§ 330.37 Are carriers which participate in this program subject to audit?

* * * * *

(b) Before you are eligible to receive payment from the final installment of compensation under the Act, there must be an independent public accountant's report based on the performance of procedures agreed upon by the Department of Transportation with respect to the carrier's forecasts and actual results. The independent public accountant's engagement must be performed in accordance with generally accepted professional standards applicable to agreed-upon procedures engagements. You must submit the results of the agreed-upon procedures engagement to the Department with your application for payment of the final installment.

■ 8. Amend Appendix A to Part 330 by revising Page 1 of 5 and Page 3 of 5 of Form 330–A to read as follows:

Appendix A to Part 330—Forms for Certificated and Commuter Air Carriers

BILLING CODE 4910–62–P

FORM 330-A
Page 1 of 5

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT

APPLICATION FOR COMPENSATION FOR CERTIFICATED AND COMMUTER AIR CARRIERS (PROVIDING PASSENGER AND COMBINATION PASSENGER/CARGO SERVICE)

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR CARRIER	
TYPE OF DOT ECONOMIC AUTHORITY HELD	
COMPENSATION AMOUNT RECEIVED TO DATE UNDER SECTION 101(A)(2) OF THE ACT	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD

SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001

FINANCIAL DATA
(in whole dollars)

Passenger Carrier Financial Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 9-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

FORM 330-A
Page 3 of 5

NAME OF AIR CARRIER	

PART 3: ESTIMATE OF LOSS FOR THE PERIOD

OCTOBER 1, 2001 TO DECEMBER 31, 2001

FINANCIAL DATA
(in whole dollars)

Passenger Carrier Financial Data	Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

■ 9. Amend Appendix B to Part 330 by revising Page 1 of 5 and Page 3 of 5 of Form 330–B to read as follows:

Appendix B to Part 330—Forms for Certificated Cargo Carriers

FORM 330-B
Page 1 of 5

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT

APPLICATION FOR COMPENSATION
FOR CERTIFICATED CARRIERS
THAT PROVIDE ALL CARGO OPERATIONS ONLY

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR CARRIER	
TYPE OF DOT ECONOMIC AUTHORITY HELD	
COMPENSATION AMOUNT RECEIVED TO DATE UNDER SECTION 101(A)(2) OF THE ACT	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD

SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001

FINANCIAL DATA
(in whole dollars)

Cargo Carrier Financial Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 09-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

FORM 330-B
Page 3 of 5

NAME OF AIR CARRIER	

Part 3: ESTIMATE OF LOSS FOR THE PERIOD

OCTOBER 1, 2001 TO DECEMBER 31, 2001

FINANCIAL DATA
(in whole dollars)

Cargo Carrier Financial Data	Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

■ 10. Amend Appendix C to Part 330 by revising Page 1 of 7 and Page 3 of 7 of Form 330–C to read as follows:

Appendix C to Part 330—Forms for Air Taxi Operators

FORM 330-C
Page 1 of 7

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT APPLICATION FOR COMPENSATION FOR AIR TAXI OPERATORS

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR TAXI OPERATOR	
DATE OF MOST RECENT PART 298 REGISTRATION OR AMENDMENT	
FAA PART 135 OR 121 CERTIFICATE NUMBER	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001
(in whole dollars)

Air Taxi Financial Data	Contracted/Planned Operations for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 09-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

The operations for hire for which losses are claimed in this chart must have been cancelled entirely, resulting in a complete loss of revenue for those operations. Revenue for these operations must not have been re-captured through subsequent re-accommodation of the same trips. Such non-recovered losses in revenues had associated countervailing reductions in operating expenses that have also been incorporated in the data and calculations in this chart.

FORM 330-C
Page 3 of 7

NAME OF AIR CARRIER	

PART 3: ESTIMATE OF LOSS FOR THE PERIOD OCTOBER 1, 2001 TO DECEMBER 31, 2001 (in whole dollars)

Air Taxi Financial Data	Pre 09-11-01 Forecast* for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 09-11-01 Forecast and the Current Forecast for the period 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

* For those air taxi operators that do not typically prepare forecasts, use contracted/scheduled services that were scheduled before September 11, 2001 and can be documented.

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Federal Register

Wednesday,
January 2, 2002

Part VII

Department of Transportation

14 CFR Part 330
Procedures for Compensation of Air Carriers; Final Rule and Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 330

[Docket OST–2001–10885]

RIN 2105–AD06

Procedures for Compensation of Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; response to comments.

SUMMARY: On September 22, 2001, President Bush signed into law the Air Transportation Safety and System Stabilization Act (''the Act''). The Act makes available to the President funds to compensate air carriers, as defined in the Act, for direct losses suffered as a result of any Federal ground stop order and incremental losses beginning September 11, 2001, and ending December 31, 2001, resulting from the September 11 terrorist attacks on the United States. In order to fulfill Congress' intent to expeditiously provide compensation to eligible air carriers, the Department used procedures set out in Program Guidance Letters to make initial estimated payments amounting to about 50 percent of the authorized funds. On October 29, 2001, the Department published a final rule and request for comments establishing application procedures for air carriers interested in requesting compensation under this statute. This document makes amendments to the rule and otherwise responds to the comments the Department received.

DATES: This rule is effective January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Steven Hatley, U.S. Department of Transportation, Office of International Aviation, 400 7th Street, SW., Room 6402, Washington, DC 20590. Telephone 202–366–1213.

SUPPLEMENTARY INFORMATION: As a consequence of the terrorist attacks on the United States on September 11, 2001, the U.S. commercial aviation industry suffered severe financial losses. These losses placed the financial survival of many air carriers at risk. Acting rapidly to preserve the continued viability of the U.S. air transportation system, President Bush sought and Congress enacted the Air Transportation Safety and System Stabilization Act (''the Act''), Public Law 107–42.

Under section 101(a)(2)(A–B) of the Act, a total of $5 billion in compensation is provided for ''direct losses incurred beginning on September 11, 2001, by air carriers as a result of any Federal ground stop order issued by the Secretary of Transportation or any subsequent order which continues or renews such stoppage; and the incremental losses incurred beginning September 11, 2001 and ending December 31, 2001, by air carriers as a direct result of such attacks.'' The Department of Transportation previously disbursed initial estimated payments of nearly $2.5 billion of the $5 billion amount that Congress authorized, using procedures set forth in the Department's Program Guidance Letters that were widely distributed and posted on the Department's Web site.

On October 29, 2001 (66 FR 54616), the Department published in the **Federal Register** a final rule and request for comments to establish procedures for air carriers who had received or wished to receive compensation under the Act. The rule covered such subjects as eligibility, deadlines for application, information and forms required of applicants, and audit requirements. The Department has received submissions from many carriers pursuant to this rule and is continuing to process requests for compensation.

The Department received 18 comments on the rule during the comment period; correspondence, memoranda of meetings, and late filed comments, have also been entered into the docket. The following portion of the preamble summarizes the comments that we received and describes the Department's responses to those comments, including, where appropriate, amendments that the Department is making to the October 29 final rule.

Wet Lease Issues

Several commenters disagreed with the rule's provisions concerning how RTMs are counted in cargo ''wet lease'' situations. In a wet lease, one air carrier (the lessor) provides an aircraft, crew, maintenance, and insurance (ACMI) for another air carrier (the lessee). The rule, consistent with an existing regulatory definition of an RTM and Bureau of Transportation Statistics (BTS) guidance concerning it, provided that for purposes of the statutory formula for determining the proper amount of compensation for which an air carrier is eligible, RTMs would be attributed to the lessee who had reported the RTMs to the Department. This approach, the preamble to the rule said, was in keeping with the statutory direction to rely on RTMs ''as reported to the Secretary.''

Comments on this subject included letters from Atlas Air, Southern Air, Cargo Airline Association (CAA), Custom Air Transport (CAT), National Air Carrier Association (NACA), Air Transport Association (ATA), Congressman James P. McGovern, and a group of six members of the Florida Congressional delegation. They were in agreement that the Department's approach to this issue should be changed.

These commenters asserted that there would not be a ''double-counting'' situation to fear by granting wet lessors compensation. Atlas claims this is because ''scope clauses in labor agreements typically prevent U.S. carriers from utilizing ACMI services''; thus, ''virtually all ACMI business is with foreign carriers, which by definition are not entitled to compensation under the Act.'' Consequently, they said, the Department's rule would unreasonably preclude any compensation for certain flights, since foreign carrier lessees are not eligible for compensation and the lessors could not count the RTMs involved for compensation purposes.

These commenters also made the point that the Department's rule elsewhere emphasizes (in denying compensation to indirect air carriers) the role of the direct air carrier in actually flying the aircraft and in fact specifies that RTMs must be flown by the air carrier submitting the claim. In this context, wet lessors better meet these standards than their lessees, they said, since the lessor is the party that actually flies the aircraft.

A number of these comments said that it was unreasonable for the Department to rely on the way RTMs are reported to the Department on the BTS ''Form 41,'' since they viewed this report as being provided for unrelated purposes. In addition, some pointed out, the Department had previously proposed a rule that would change reporting requirements so that operating carriers (i.e., the lessor in a wet lease situation) would report the RTMs.

Some of these comments referred to the ''other auditable measure'' language in the Act, saying that this language provided greater flexibility than the Department had provided in the rule. However, none of the commenters suggested any other auditable measures. Instead, several requested that they be able to count what they believed were their own RTMs for operating as wet lessors, even though these RTMs had previously been reported to the Department by the lessees.

In a late-filed comment, CAT urged that the Department reverse its position

that wet lessees, rather than wet lessors, be credited with RTMs. CAT is a wet lessor that operates flights on behalf of other U.S. carriers. CAT asserted that it is irrelevant who reports RTMs to the Department; what should be dispositive in all cases, in CAT's view, is who actually operated the flights. This is just as true in the case of situations in which U.S. carriers are the lessees as in which foreign carriers are the lessees.

In the Conference Report on the Aviation Transportation Security Act (House Report 107–296 at p. 79), the managers made the following comment on this issue:

> It is the Conferees' position that the Stabilization Act's section 103 compensation formula language, ''revenue ton miles or other auditable measure'' should be broadly construed and should not restrict compensation exclusively to revenue ton miles reported on previously filed DOT Form 41s. If Air, Crew, Maintenance, Insurance lessors can provide accurate and auditable records of their revenue-ton-miles during the relevant time period, then they should be eligible for compensation based under the Stabilization Act.''

DOT Response

Double counting—compensating more than one carrier for the same operation—is contrary to the statutory scheme of the Act. Under the Act, the amount of compensation available to a carrier is not simply a function of actual documented losses. Rather, compensation availability is limited by a formula based on the available seat-miles or revenue ton-miles (or other auditable measure) as reported by the carriers. The formula approach was clearly envisioned as a way to permit carriers to participate in a finite amount of compensation based on their proportionate market shares. Market shares are not ''shared'' due to multiple carriers participating in particular operations. Indeed, permitting two or more carriers to be compensated for the same operation would give greater weight to some operations than others, contrary to the broad and proportionate distribution principle evident from the language of both section 101 and 103.

For example, suppose carrier A and carrier B both participated in operation X. Meanwhile, carrier C flew the same amount of cargo over the same route in operation Y, without the involvement of another carrier. Both operations result in 100,000 RTMs. If double counting were permitted, operation X would generate twice as much compensation as operation Y, reducing the total pool of funds available to all carriers, depriving other carriers of the proportionate amount of compensation that Congress intended them to receive.

We would also point out that there are many forms of multiple participation in operations, such as wet leases, charters, code shares, and indirect/direct air carrier relationships. Attempting to find ways of accommodating all these situations, and the variety of types of double counting that would be involved, would not only be administratively impracticable but inevitably involve multiple inequities. Congress could not have intended such a result.

We do not agree with commenters who would disregard the role of the Department's reporting requirements (i.e., the Form 41 process) in determining the appropriate carriers to receive ''credit'' for ASMs or RTMs. Knowledge of this long-standing reporting scheme can clearly be attributed to Congress, and the Act's explicit and repeated references to ASMs and RTMs ''as reported to the Secretary'' show that Congress implicitly adopted the Department's reporting requirements. There is no evidence that Congress sought to revise these requirements or nullify them for purposes of the statutory compensation formula so that, for example, wet lessors would get credit for ASMs and RTMs while wet lessees would not.

We recognize Congress did add the term ''or other auditable measure'' to the calculus with respect to RTMs. While neither the Department nor commenters have been able to suggest what such measures might be, this addition at least stands for the proposition that Congress intended some flexibility in the way that compensation was distributed among cargo carriers. That interpretation is fortified by the Conferees' statement in House Report 107–296 as cited above, which we note was directly in support of the compensation claims of wet lessors.

Working with these principles, together with the mandates of the Act itself, we believe that the comments discussed above have some merit, and that wet lessors in some circumstances can participate in compensation payments. The primary condition to that participation is that an eligible carrier with a superior claim to RTMs under our rules has not applied for compensation. This requirement is necessary in order to avoid either double counting or the displacing of the claim of another carrier (e.g., the lessee in a wet lease situation) that Congress, through its ''as reported to the Secretary'' language, intended the Department to recognize.

Therefore, we will accept applications from wet lessors if they (1) Otherwise qualify as an air carrier; (2) identify and document their status as wet lessor, explaining thereby why they have not previously reported ASMs or RTMs for the operations in question; (3) identify the wet lessees involved in these operations; (4) document that such lessees are either ineligible for compensation or voluntarily have not and will not claim such compensation with respect to the operations in question; and (5) provide accurate and auditable records of ASMs or RTMs actually flown during the relevant time period for these operations.

We recognize that it is possible that some wet lessors either did not apply for compensation because of the way that the rule addressed this issue or would seek to amend their applications to claim additional RTMs or ASMs. We are amending the application procedures of the rule to allow carriers to do so within 14 days of the publication of this amendment.

Claims to confidentiality of information provided under this provision will be carefully scrutinized. In any situation in which the Department determines that both wet lessors and wet lessees have claimed compensation for the same operations, the Department's general rule that wet lessees report RTMs will be given effect and lessees given priority.

Indirect Air Carrier Issues

A number of commenters objected to the provision of the rule that only direct air carriers are eligible for compensation. These commenters (Emery Air Freight, CAA, BAX Global, and the Association of Air Medical Services (AAMS)) pointed out, first, that indirect air carriers are within the statutory definition of ''air carrier,'' and consequently should be eligible for compensation. These commenters disagreed with the Department's contention, in the rule's preamble, that the intent of Congress was to compensate carriers who actually operated flights. Emery added that, as an air freight forwarder, it has been recognized in DOT administrative decisions as responsible for the transportation of property, even though it did not actually operate flights.

Emery also asserted that, as a lessee for air freight transportation, it suffered losses because the direct air carriers whose aircraft it leased could not fly during the period of the Secretary's September 11 ground stop order. This is exactly the sort of loss Congress intended to compensate, Emery said.

Reporting ASMs or RTMs to the Department should not be an *eligibility* requirement, these commenters said. All air carriers should be eligible for

compensation regardless of whether the Department could calculate the ''formula cap'' for compensation using RTMs, particularly since the statute allows for ''other auditable measures'' to be used in place of RTMs.

In some cases, CAA said, indirect air carriers should get credit for the RTMs involved in cargo operations, since they ''generate'' the freight carried, contract with direct air carriers for dedicated lift which requires payment regardless of how much freight is carried, and bear the entire financial risk for the operation. Emery also said that it, rather than the direct air carriers involved, should be regarded as generating RTMs, which the direct air carrier merely reports.

BAX asserted that it is the Department's obligation to find an appropriate ''other auditable measure'' for indirect air carrier operations for carriers that do not report RTMs, though BAX did not suggest what such measures might be. BAX did suggest, however, that the flexibility given to air taxis in the rule, for whom DOT could estimate RTMs based on other data, could be given to indirect air carriers as well.

BAX dismissed the Department's concern about ''duplicating'' ASMs or RTMs, saying that such overlap between direct and indirect air carriers is not ''inherently injurious.'' BAX appears to mean that a carrier will not be able to get ''double recovery,'' though it concedes that some carriers might have their compensation reduced as a result. Emery agreed that allowing indirect air carriers to claim RTMs will not require DOT to pay more than once for a specific loss. Emery added that the parties to a contract (i.e., a direct and indirect air carrier) should be able to provide DOT the information needed to make appropriate allocations of relief.

AAMS, representing air ambulance operators, also requested that the Department provide compensation to those air ambulance operators who are indirect air carriers.

DOT Response

Much of the discussion above concerning wet lease issues also pertains to the comments on indirect air carrier issues. In particular, the Department believes that double counting is impermissible. We find nothing in the text of the statute or its legislative history suggesting that Congress meant for carriers to be able to ''share'' RTMs. Further, none of these commenters have offered a way to calculate ''other auditable measures'' that may be applicable to them in a way that is free of the problem of duplicating the claims of other carriers. (BAX's analogy to air taxis is inapposite, since air taxis have been required to construct RTM data in a manner consistent with other carriers and no duplication of data is involved.)

Nor are we persuaded by the suggestions that indirect air carrier/freight forwarders have a superior claim to RTMs that are flown with their cargo aboard. As noted above, we believe that Congress implicitly adopted the reporting requirements of the Department in the Act, and we find no suggestion that it intended to displace, as eligible for compensation under the Act, the direct air carriers that report RTMs in accordance with our rules in favor of indirect air carriers that do not.

As to comments analogizing the role of freight forwarders to that of wet lessees, there are clearly differences between the two. While both assume economic risks, a wet lessee assumes economic control and responsibility for the flight, which the freight forwarder does not. As to claims that freight forwarder operations are economically equivalent to a wet lease, if an air carrier has in fact reported RTMs to the Department as a wet lessee, then its application can be processed on that basis. We believe that the manner in which carriers have actually defined their relationships and reported the data to DOT—without regard to the economic incentive created by the availability of compensation—should be given credibility.

That said, we are deleting the provision of the rule that made indirect air carriers ineligible to apply for compensation. In order to be consistent with the approach we have taken above for wet lessors, we will accept for processing applications from indirect air carriers if they (1) Otherwise qualify as an air carrier; (2) identify and document their status as an indirect air carrier, explaining thereby why they have not previously reported ASMs or RTMs on claimed operations; (3) identify the direct air carriers involved in their operations; (4) document that such direct air carriers are either ineligible for compensation or voluntarily have not and will not claim such compensation with respect to the operations in question; and (5) provide accurate and auditable records of ASMs or RTMs actually flown during the relevant time period for these operations.

We recognize that it is possible that some indirect air carriers may not have applied for compensation in the past because the rule said that they were ineligible. We are amending the application procedures of the rule to allow indirect air carriers who did not apply previously to so do within 14 days of the publication of this amendment.

As noted above, claims to confidentiality of information provided under this provision will be carefully scrutinized. In any situation in which the Department determines that both indirect and direct air carriers have claimed compensation for the same operations, the Department's general rule that direct air carriers report RTMs will be given effect and they will be given priority.

Air Ambulance Issues

AAMS expressed concern about the provisions of the Act and the rule that based calculations of compensation for which air carriers are eligible on available seat-miles (ASMs). AAMS said that ASMs are not a good measure of the capacity of air ambulance services, because air ambulances must be staffed and ready to go on a 24-hour basis, yet fly relatively few ASMs. Given the way the statutory formula works, this would result in very little compensation being made available to air ambulance services.

In place of the ASM calculations that are used for other kinds of air carriers, AAMS recommended that the Department calculate lost volume by comparing the flight volume of August and September 2001, multiplying the difference by the average revenue per flight, and extrapolating the result to the industry as a whole. AAMS suggested that the functional equivalent of ASMs (i.e., as a measurement of capacity) could be calculated by multiplying the average number of seats in air ambulances aircraft (six) times the average speed of the aircraft (150 m.p.h.) times the hours per day it is staffed and ready (24). This, AAMS suggested, would create a reasonable approximation of the capacity of an air ambulance aircraft per day.

In the Aviation and Transportation Security Act (Pub. L. 107–71), Congress also addressed the situations of air ambulances. Section 124(d) of this statute amended section 103 of the Air Transportation Safety and System Stabilization Act. The purpose of this amendment, according to the Conference Report (House Report 107–296 at p. 79), is to ''to allow for a modified system of providing compensation to air tour operators and air ambulances to better address their needs after industry wide losses.'' The following is the text of this amendment:

(d) Compensation for Certain Air Carriers.—

(1) Set-Aside.—The President may set aside a portion of the amount of

compensation payable to air carriers under section 101(a)(2) to provide compensation to classes of air carriers, such as air tour operators and air ambulances (including hospitals operating air ambulances) for whom application of a distribution formula containing available seat miles as a factor would inadequately reflect their share of direct and incremental losses. The President shall reduce the $4,500,00,000 specified in section (b)(2)(A)(i) by the amount set aside under this subsection.

(2) Distribution of Amounts.—The President shall distribute the amount set aside under this subsection proportionally among such air carriers based on an appropriate auditable measure, as determined by the President.

Under the statutory language, use of this set-aside authority is discretionary (''The President may set aside * * *''). Neither the statute nor the Conference Report provides any guidance concerning the appropriate size of such a set-aside or the identity of any other ''classes'' of air carriers that could be included in it, if the President chooses to use the authority.

DOT Response

The Department will consider using the discretion provided by section 124(d) of the Transportation Security Act to set aside a portion of the $4.5 billion compensation available for passenger carriers for air ambulances and other classes of air carriers for whom application of an ASM-based compensation formula would inadequately reflect their share of direct and incremental losses. The Department is issuing a separate document in today's **Federal Register** requesting comment on the issue of whether we should establish a set-aside, which classes of carriers a set-aside should cover, and what method or methods should be used to allocate funds from a set-aside.

Charter Carrier Issues

NACA, representing charter air carriers, asked for changes in the data the Department collects. NACA said that Parts 2 and 4 of Form 330–A request a variety of types of information (e.g., forecast ASMs and RTMs; volume, revenue and cost information related to individual passengers; break even load factor, average length of passenger haul, departures planned, average passenger fares, and passenger yield per RPM) that are not relevant to charter air carriers' operation. Charter air carriers, NACA said, typically sell full planeload charter flights to tour operators, who in turn pay for the whole airplane by ''block hour.'' Charter revenue forecasts are based on aircraft utilization, which is the predicted monthly number of block hours the carrier expects to operate. The forecast units then become revenue and cost per block hour, rather than ASMs and RTMs.

DOT Response

The Department understands that some charter carriers may not have some of the data elements in the form the Department has asked for them. The Department has received applications from a number of such carriers, and we are working with the carriers in question to clarify information necessary to permit determinations on compensation to be made. Consequently, the Department does not believe that it is necessary to make any changes in the current rule or forms to accommodate NACA's concern. However, we will consider whether, in connection with the third increment of compensation we intend to distribute in 2002, we should change any of the data elements for charter carriers.

Accounting Issues

The American Institute of Certified Public Accountants (AICPA) recommended a number of changes in the way that the rule describes the independent audit requirements of the final rule. Rather than requiring a ''review'' of a carrier's ''forecasts,'' or an ''audited financial statement,'' AICPA suggested that DOT require carriers to perform an ''agreed-upon procedures engagement.'' This change would make the rule more consistent with accounting terms of art, AICPA said. AICPA provided a suggested draft of such agreed-upon procedures as well as technical amendments to the rule's language that would accommodate the group's concerns.

AICPA also commented concerning the rule's requirement that carriers report and support reports of losses for the period beginning September 11, 2001. Generally, AICPA said, carriers prepare financial data on a monthly, rather than a daily basis, so it would make more sense to report losses beginning September 1 rather than September 11. Also, carriers and the DOT should have access to the independent auditors' working papers on request, but the carrier should not routinely obtain and retain them. Doing the latter would be inconsistent with AICPA auditing standards, the organization asserted.

The Air Transport Association noted in its comments that it supported the AICPA's views.

DOT Response

In the interest of facilitating auditing of carriers' records, the Department will make the regulatory text changes suggested by AICPA, with minor edits. These changes in the Department's rule include adoption of the ''agreed-upon procedures engagement'' approach that AICPA suggested. However, the Department does not adopt or otherwise approve the specific agreed-upon procedures document enclosed with AICPA's comment.

In implementing the agreed-upon procedures approach, DOT will require that airlines and their accountants use procedures that are acceptable to applicants and the Department. The Department intends to issue, in the near future, guidance that will provide the essential elements of procedures that the Department will accept. As part of this process, the Department is considering guidance relating to abbreviated procedures for smaller air carriers.

Before- and After-Tax Reporting

TEM Enterprises noted that the rule requires that carriers report both ''net losses, before taxes'' and ''total net income after taxes, based on application of standard corporate income tax rates.'' TEM recommended that the Department use before-tax information in determining compensation, particularly where a carrier projected losses even before the September 11 attacks, since no tax would have been paid in that case. It would not make sense to use after-tax data except, perhaps, in the case of carriers who project having taxable income at the end of their tax years. TEM also objected to the possibility that the reference to ''standard corporate tax rates'' would mean that the Department would uniformly apply a 34 percent tax rate against a carrier's projected net income.

AICPA also asked for clarification on whether compensation will be based on pre-tax or net income after taxes, and on what is meant by the rule's reference to ''standard corporate income tax rates.''

DOT Response

The Department has determined, as the result of reviewing both compensation applications and comments to the docket for this rule, that the Department will rely on pre-tax data for purposes of determining carriers' losses. Consequently, issues concerning use of after-tax data, including the appropriate corporate tax rate to apply, are moot. We have deleted the after-tax income lines from the reporting forms in Appendices A–C of the regulation.

Documentation of pre-September 11 Forecasts

TEM Enterprises and Custom Air Transport made similar comments concerning the rule's requirement that carriers submit documentation that pre-September 11 forecasts were, in fact, completed before September 11. The problem, they said, was that carriers such as themselves do not routinely prepare forecasts of the kind contemplated by the rule. They could produce, for purposes of their applications, they said, detailed forecasts based on information existing before September 11, but these forecasts were prepared after September 11. It would be unreasonable, they said, to exclude carriers from compensation because their normal business practices before September 11 did not involve preparing detailed forecasts. Like air taxis, some other air carriers should be given flexibility to make a good faith effort to categorize their revenues and expenses according to the rule's forms.

DOT Response

The Department believes that it is fair to accommodate the situation of carriers that did not prepare actual forecasts before September 11. In reviewing applications that have been submitted, the Department has accepted some carriers' estimates of pre-September 11 expectations for their performance, based on historical data, in lieu of a forecast actually made before that date. As a matter of interpretation, the Department will continue this practice. While the Department will scrutinize the carrier's data to make sure the estimates of expectations are reasonable, the Department will not exclude carriers in this category from eligibility for compensation.

Other Issues

Worldwide Flight Services, an aviation services firm that provides ramp, passenger, cargo, maintenance, container leasing, and fueling services, commented that it has suffered significant losses as the result of the September 11 attacks. The company is not receiving its expected revenue because carrier customers operating fewer flights are using their services less. Worldwide asserted it is not an indirect air carrier and that its unique position and the services it provides to carriers should result in its becoming eligible for compensation. Generally, Worldwide believes its services are vital to the flights of aircraft.

If its operations stopped tomorrow, Worldwide said, many flights could not operate because essential services would not be provided, especially in smaller communities. According to Worldwide, in view of the Act's mandate that the Secretary take appropriate action to ensure the continuation of scheduled air service to small communities, the Department should compensate the company. In addition, acccording to worldwide, if Worldwide stopped providing its service, there would be interruptions of mail deliveries.

ATA expressed concern about the provision that carriers must provide all requested information with their applications or face rejections of their applications by the Department. This requirement is too stringent, in ATA's view, particularly since carriers may be unable to meet precisely some of the rule's information requirements. For example, carriers may well be unable to provide an auditable forecast and actual losses for the September 11–30 period, since they do not keep records in a daily or weekly, as opposed to monthly, fashion. Like AICPA, ATA recommended that the rule's information collection requirements relate to the entire month of September.

Finally, ATA disagreed with the rule's requirement that independent auditors review carriers' forecasts for accuracy. This, ATA said, would be difficult given the variation among carriers' forecasting methods. Instead, the auditors should certify that the forecast submitted to DOT was the carrier's most recently available forecast prior to September 11.

DOT Response

The events of September 11 had serious economic effects on a wide variety of businesses. For example, airport concessionaires, hotels and resorts, and other tourism-related businesses appear to have lost substantial amounts of money. We do not doubt that an aviation services company like Worldwide may have suffered significant financial losses as the result of the September 11 attacks, and we recognize that firms like Worldwide can play an important role in the aviation industry.

Nevertheless, Congress provided compensation in the Act only to air carriers. Worldwide is not only not an indirect air carrier; it is not an air carrier at all, as defined in the Act. We do not have the legal discretion to provide compensation to parties that are not air carriers, even though doing so could help to achieve other purposes of the Act, such as maintaining service to small communities.

The Act requires losses to be calculated from September 11, not September 1. The Department cannot assume that a forecast pertaining to all of September will permit an accurate calculation of losses pertaining to September 11–30. Certainly, merely pro-rating data for the entire month as a means of estimating losses for September 11–30 would not be an accurate method for doing so. It is appropriate and possible, in the Department's view, for carriers—even those who did not originally structure their forecasts in this fashion—to break out data pertaining to September 1–10 and September 11–30, respectively.

As noted in the response to the AICPA comment, DOT is modifying audit requirements and will rely on ''agreed-upon procedures'' as distinct from a formal ''review'' or ''audit'' of carrier information. This change adequately responds to ATA's comments on this point. We do not believe it would be adequate to have an auditor merely attest to the recency of a carrier's documents. To ensure that the Department distributes funds in accordance with Congress' direction, auditors need to consider the accuracy of the substance of this information.

Regulatory Analyses and Notices

This rule is an economically significant rule under Executive Order 12886, since it will facilitate the distribution of more than a billion dollars into the economy during the 12-month period following its issuance. Because of the need to move quickly to provide compensation to air carriers for the purpose of maintaining a safe, efficient, and viable commercial aviation system in the wake of the events of September 11, 2001, we are not required to provide an assessment of the potential cost and benefits of this regulatory action. The Department has determined that this rule is being issued in an emergency situation, within the meaning of Section 6(a)(3)(D) of Executive Order 12866. However, this impact is expected to be a favorable one: making these funds available to air carriers to compensate them for losses resulting from the terrorist attacks of September 11. In accordance with Section 6(a)(3)(D), this rule was submitted to the Office of Management and Budget for a brief review.

Because a notice of proposed rulemaking is not required for this rulemaking under 5 U.S.C. 553, we are not required to prepare a regulatory flexibility analysis under 5 U.S.C. 604. However, we do note that this rule may have a significant economic effect on a substantial number of small entities. Among the entities in question are air taxis, as well as some commuters and small certificated air carriers. In

analyzing small entity impact for purposes of the Regulatory Flexibility Act, we believe that, to the extent that the rule impacts small air carriers, the impact will be a favorable one, since it will consist of receiving compensation. We have facilitated the participation of small entities in the program by allowing a longer application period for air taxis, which are generally the smallest carriers covered by this rule and which do not otherwise report traffic or financial data to the Department. The Department has also concluded that this rule does not have sufficient Federalism implications to warrant the consultation requirements of Executive Order 13132.

We are making this rule effective immediately, without prior opportunity for public notice and comment. Because of the need to move quickly to provide compensation to air carriers for the purpose of maintaining a safe, efficient, and viable commercial aviation system in the wake of the events of September 11, 2001, prior notice and comment would be impractical, unnecessary, and contrary to the public interest. Consequently, prior notice and comment under 5 U.S.C. 553 and delay of the effective date under 5 U.S.C. 801, *et seq.*, are not being provided. On the same basis, we have determined that there is good cause to make the rule effective immediately, rather than in 30 days. We are providing for a 14-day comment period following publication of the rule, however. The Department will subsequently respond to comments we receive.

The Office of Management and Budget has approved the information collection requirements of this rule, with Control Number 2105–0546.

List of Subjects in 14 CFR Part 330

Air carriers, Grant programs—transportation, Reporting and recordkeeping requirements.

Issued this 26th day of December, 2001, at Washington, DC.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

■ For the reasons set forth in the preamble, the Department amends 14 CFR Part 330 as follows:

PART 330—PROCEDURES FOR COMPENSATION OF AIR CARRIERS

■ 1. The authority citation for Part 330 is revised to read as follows:

Authority: Pub. L. 107–42, 115 Stat. 230 (49 U.S.C. 40101 note); sec. 124(d), Pub. L. 107–71, 115 Stat. 631 (49 U.S.C. 40101 note).

■ 2. Amend § 330.7 by revising paragraph (c) to read as follows:

§ 330.7 How much of an eligible air carrier's estimated compensation will be distributed under this part?

* * * * *

(c) If, as an air carrier, you are able to submit data, subsequent to your application under this part but before December 31, 2001, demonstrating and documenting conclusively that you have incurred actual losses as defined in section 101(a)(2) of the Act that exceed the amount of compensation for which you demonstrate you are eligible under the formula of section 103(b)(2) of the Act, the Department may disburse to you, without waiting for a submission in Calendar Year (CY) 2002, the remainder of the formula amount of compensation for which you are eligible.

(1) A carrier that requests a final installment before December 31, 2001 must submit its claim of actual losses for the period of the claim, a forecast for the same period that was prepared before September 11, 2001, and an independent public accountant's report based on the performance of agreed-upon procedures approved by the Department of Transportation with respect to the carrier's forecasts and actual results. The independent public accountant's engagement must be performed in accordance with generally accepted professional standards applicable to agreed-upon procedures engagements.

(2) The consideration of requests for final payment before December 31, 2001 is contingent upon the establishment by the Department of a fixed comprehensive universe of ASMs and RTMs for all eligible air carriers to be used as the basis of the final compensation formula for all eligible air carriers as established in the Act.

§ 330.11 [Amended]

■ 3. Amend § 330.11 by removing and reserving paragraph (b).

■ 4. Amend § 330.21 by adding new paragraphs (d) and (e), to read as follows:

§ 330.21 When must air carriers apply for compensation?

* * * * *

(d) Notwithstanding any other provision of this section, if you are an eligible air carrier that did not submit an application or wishes to amend its application, you may do so by January 16, 2002 if you are one of the following:

(1) An indirect air carrier which did not file an application because indirect air carriers were formerly ineligible to apply for compensation; or

(2) A wet lessor that either did not file an application, or submitted fewer ASMs or RTMs with its application than it now believes can be counted for compensation purposes, because this rule formerly limited the ASMs or RTMs that you could submit.

(e) If you are submitting a new or amended application under paragraph (d) of this section, you must include a signed statement, under penalty of perjury, that you are submitting the new or amended application for the reason stated in paragraph (d)(1) or (d)(2) of this section.

■ 5. Revise § 330.31 to read as follows:

§ 330.31 What data must air carriers submit concerning ASMs or RTMs?

(a) Except as provided in paragraph (d) of this section, if you are applying for compensation as a passenger or combination passenger/cargo carrier, you must have submitted your August 2001 total completed ASM report to the Department for your system-wide air service (e.g., scheduled, non-scheduled, foreign, and domestic).

(b) Except as provided in paragraph (d) of this section, if you are applying for compensation as an all-cargo carrier, you must have submitted your RTM reports to the Department for the second calendar quarter of 2001.

(c) In calculating and submitting ASMs and RTMs under paragraphs (a) and (b) of this section, there are certain things you must not do:

(1) Except at the direction of the Department, or to correct an error that you document to the Department, you must not alter the ASM or RTM reports you earlier submitted to the Department. Your ASMs or RTMs for purposes of this part are as you have reported them to the Department according to existing standards, requirements, and methodologies established by the Office of Airline Information (Bureau of Transportation Statistics).

(2) You must not include ASMs or RTMs resulting from operations by your code-sharing or alliance partners.

(3) You must not include ASMs or RTMs that are reported by or attributable to flights by another carrier.

(d) If you have not previously reported ASMs or RTMs as provided in paragraphs (a) and (b) of this section for a given operation or operations, you may submit your calculation of ASMs or RTMs to the Department with your application. You must certify the accuracy of this calculation and submit with your application the data and assumptions on which the calculation is based. After reviewing your submission, the Department may modify or reject your calculation.

(1) If you are a direct air carrier that has operated your aircraft for a lessee (i.e., a wet lease, or aircraft, crew, maintenance, and insurance (ACMI)

operation), you may submit your calculation of ASMs or RTMs for these flights. Your submission must include the following elements:

(i) Documentation that you otherwise qualify as an air carrier;

(ii) Documentation that you are a wet lessor, and an explanation of why you did not previously report ASMs or RTMs for the operations in question;

(iii) Documentation of the identify of the wet lessees involved in these operations;

(iv) Documentation that such lessees are either ineligible for compensation or voluntarily have not and will not claim such compensation with respect to the operations in question; and

(v) Accurate and auditable records of ASMs or RTMs actually flown during the relevant time period for these operations.

(2) If you are an indirect air carrier, you may submit your calculation of ASMs or RTMs for flights that direct air carriers have operated for you under contract or other arrangement. Your submission must include the following elements:

(i) Documentation that you otherwise qualify as an air carrier;

(ii) Documentation that you are an indirect air carrier, and an explanation of why you did not previously report ASMs or RTMs for the operations in question;

(iii) Documentation of the identify of the direct air carriers involved in these operations;

(iv) Documentation that such direct air carriers are either ineligible for compensation or voluntarily have not and will not claim such compensation with respect to the operations in question; and

(v) Accurate and auditable records of ASMs or RTMs actually flown during the relevant time period for these operations.

■ 6. Amend § 330.35 by revising paragraph (a)(4) to read as follows:

§ 330.35 What records must carriers retain?

* * * * *

(a) * * *

(4) You must agree to have your independent public accountant retain all reports, working papers, and supporting documentation pertaining to the agreed-upon procedures engagement conducted by your independent public accountant under the requirements of this part for a period of five years. The accountant must make this information available for audit and examination by representatives of the Department of Transportation (including the Office of the Inspector General), the Comptroller General of the United States, or other Federal agencies.

* * * * *

■ 7. Amend § 330.37 by revising paragraph (b) to read as follows:

§ 330.37 Are carriers which participate in this program subject to audit?

* * * * *

(b) Before you are eligible to receive payment from the final installment of compensation under the Act, there must be an independent public accountant's report based on the performance of procedures agreed upon by the Department of Transportation with respect to the carrier's forecasts and actual results. The independent public accountant's engagement must be performed in accordance with generally accepted professional standards applicable to agreed-upon procedures engagements. You must submit the results of the agreed-upon procedures engagement to the Department with your application for payment of the final installment.

■ 8. Amend Appendix A to Part 330 by revising Page 1 of 5 and Page 3 of 5 of Form 330–A to read as follows:

Appendix A to Part 330—Forms for Certificated and Commuter Air Carriers

BILLING CODE 4910–62–P

FORM 330-A
Page 1 of 5

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT

APPLICATION FOR COMPENSATION FOR CERTIFICATED AND COMMUTER AIR CARRIERS (PROVIDING PASSENGER AND COMBINATION PASSENGER/CARGO SERVICE)

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR CARRIER	
TYPE OF DOT ECONOMIC AUTHORITY HELD	
COMPENSATION AMOUNT RECEIVED TO DATE UNDER SECTION 101(A)(2) OF THE ACT	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD

SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001

FINANCIAL DATA
(in whole dollars)

Passenger Carrier Financial Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 9-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

FORM 330-A
Page 3 of 5

NAME OF AIR CARRIER	

PART 3: ESTIMATE OF LOSS FOR THE PERIOD

OCTOBER 1, 2001 TO DECEMBER 31, 2001

FINANCIAL DATA
(in whole dollars)

Passenger Carrier Financial Data	Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

■ 9. Amend Appendix B to Part 330 by revising Page 1 of 5 and Page 3 of 5 of Form 330–B to read as follows:

Appendix B to Part 330—Forms for Certificated Cargo Carriers

FORM 330-B
Page 1 of 5

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT

APPLICATION FOR COMPENSATION
FOR CERTIFICATED CARRIERS
THAT PROVIDE ALL CARGO OPERATIONS ONLY

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR CARRIER	
TYPE OF DOT ECONOMIC AUTHORITY HELD	
COMPENSATION AMOUNT RECEIVED TO DATE UNDER SECTION 101(A)(2) OF THE ACT	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD

SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001

FINANCIAL DATA
(in whole dollars)

Cargo Carrier Financial Data	Pre 9-11-01 Forecast for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 09-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

FORM 330-B
Page 3 of 5

NAME OF AIR CARRIER	

Part 3: ESTIMATE OF LOSS FOR THE PERIOD

OCTOBER 1, 2001 TO DECEMBER 31, 2001

FINANCIAL DATA
(in whole dollars)

Cargo Carrier Financial Data	Pre 9-11-01 Forecast for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 9-11-01 Forecast and the Current Forecast for 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

■ 10. Amend Appendix C to Part 330 by revising Page 1 of 7 and Page 3 of 7 of Form 330–C to read as follows:

Appendix C to Part 330—Forms for Air Taxi Operators

FORM 330-C
Page 1 of 7

AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT APPLICATION FOR COMPENSATION FOR AIR TAXI OPERATORS

NAME, ADDRESS AND TELEPHONE NUMBER OF AIR TAXI OPERATOR	
DATE OF MOST RECENT PART 298 REGISTRATION OR AMENDMENT	
FAA PART 135 OR 121 CERTIFICATE NUMBER	

PART 1: FORECASTED & ACTUAL LOSSES FOR THE PERIOD SEPTEMBER 11, 2001 TO SEPTEMBER 30, 2001
(in whole dollars)

Air Taxi Financial Data	Contracted/Planned Operations for the Period 9-11-01 through 9-30-01	Actual Results for the Period 9-11-01 through 9-30-01	Difference Between the Pre 09-11-01 Forecast and Actual Results for 9-11-01 through 9-30-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

The operations for hire for which losses are claimed in this chart must have been cancelled entirely, resulting in a complete loss of revenue for those operations. Revenue for these operations must not have been re-captured through subsequent re-accommodation of the same trips. Such non-recovered losses in revenues had associated countervailing reductions in operating expenses that have also been incorporated in the data and calculations in this chart.

FORM 330-C
Page 3 of 7

NAME OF AIR CARRIER	

PART 3: ESTIMATE OF LOSS FOR THE PERIOD OCTOBER 1, 2001 TO DECEMBER 31, 2001 (in whole dollars)

Air Taxi Financial Data	Pre 09-11-01 Forecast* for the Period 10-01-01 through 12-31-01	Current Forecast for the Period 10-01-01 through 12-31-01	Difference Between the Pre 09-11-01 Forecast and the Current Forecast for the period 10-01-01 through 12-31-01
Total Operating Revenue			
Total Operating Expenses			
Total Operating Income			
Non-Operating Income			
Non-Operating Expenses			
Income Before Taxes			

* For those air taxi operators that do not typically prepare forecasts, use contracted/scheduled services that were scheduled before September 11, 2001 and can be documented.

[FR Doc. 01–32176 Filed 12–27–01; 4:28 pm]
BILLING CODE 4910–62–C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 330

[Docket OST–2001–10885]

RIN 2105–AD06

Procedures for Compensation of Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Request for comments.

SUMMARY: On September 22, 2001, President Bush signed into law the Air Transportation Safety and System Stabilization Act (''the Act''). The Act makes available to the President funds to compensate air carriers, as defined in the Act, for direct losses suffered as a result of any Federal ground stop order and incremental losses beginning September 11, 2001, and ending December 31, 2001, resulting from the September 11 terrorist attacks on the United States. In a final rule being published in today's **Federal Register**, the Department is amending its application procedures for this compensation program. This document requests further comments on the issue of whether the Department should establish a set-aside of compensation funds for classes of air carriers, such as air ambulances and air tour operators, for whom the final rule's compensation formula may not adequately reflect their share of direct and incremental losses.

DATES: Comments should be received by January 16, 2002; late-filed comments will be considered to the extent practicable.

ADDRESSES: Interested persons should sent comments to Docket Clerk, Docket OST–2001–10885, Department of Transportation, 400 7th Street, SW., Room PL–401, Washington, DC 20590. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 10 a.m. to 5 p.m., Monday through Friday. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/*. Commenters who wish to file comments electronically should follow the instructions on the DMS Web site. Interested persons can also review comments through this same Web site.

FOR FURTHER INFORMATION CONTACT: Steven Hatley, U.S. Department of Transportation, Office of International Aviation, 400 7th Street, SW., Room 6402, Washington, DC 20590. Telephone 202–366–1213.

SUPPLEMENTARY INFORMATION: As noted in the preamble to the final rule on airline compensation procedures that the Department is publishing in today's **Federal Register**, commenters expressed a concern about the provisions of the Act that based calculations of compensation for which air carriers are eligible on available seat-miles (ASMs). The concern was basically that this ASM-based formula would not adequately compensate air ambulances and air tour operators for the losses they suffered as the result of the September 11 attacks.

In the Aviation and Transportation Security Act (Public Law 107–71), Congress addressed the situations of air ambulances, air tour operators and other similarly situated classes of air carriers. Section 124(d) of this statute amended section 103 of the Air Transportation Safety and System Stabilization Act. The purpose of this amendment, according to the Conference Report (House Report 107–296 at p. 79), is to ''to allow for a modified system of providing compensation to air tour operators and air ambulances to better address their needs after industry wide losses.'' The following is the text of this amendment:

> (d) Compensation for Certain Air Carriers.—
>
> (1) Set-aside.—The President may set aside a portion of the amount of compensation payable to air carriers under section 101(a)(2) to provide compensation to classes of air carriers, such as air tour operators and air ambulances (including hospitals operating air ambulances) for whom application of a distribution formula containing available seat miles as a factor would inadequately reflect their share of direct and incremental losses. The President shall reduce the $4,500,00,000 specified in subsection (b)(2)(A)(i) by the amount set aside under this subsection.
>
> (2) Distribution of Amounts.—The President shall distribute the amount set aside under this subsection proportionally among such air carriers based on an appropriate auditable measure, as determined by the President.

Under the statutory language, use of this set-aside authority is discretionary (''The President may set aside * * *''). Neither the statute nor the Conference Report provides any guidance concerning the appropriate size of such a set-aside, the methodology for proportionally allocating any funds set aside, or the identity of any other ''classes'' of air carriers that could be included in it, if the President chooses to use the authority.

The Department is considering using the discretion provided by section 124(d) of the Transportation Security Act to set aside a portion of the $4.5 billion compensation available for passenger carriers for air tour operators, air ambulances and other classes of air carriers for whom application of an ASM-based compensation formula would inadequately reflect their share of direct and incremental losses. The Department does not have sufficient information to determine whether to create such a set-aside at this time, which classes of carriers a set-aside would cover, what the appropriate size of such a set-aside would be, or how any funds set aside should be allocated. While we have some information about the situation of air ambulances, we have little information about the situation of other classes of air carriers to which such a set-aside could apply.

Both because of this lack of information and our desire to avoid delays in distributing the second increment of compensation funds to carriers, the Department did not make a determination, for purposes of today's final rule, about whether to create a set-aside. After this second increment of funds is distributed, approximately 15 percent of the authorized $4.5 billion will remain. This should be more than enough to use for the purpose of compensating carriers who would be subject to such a set-aside. If the Department decides to implement a set-aside, we would do so in connection with the third increment of compensation funds. To help the Department decide whether to implement a set-aside, the Department requests information concerning whether there are classes of air carriers for whom application of an ASM-based compensation formula would inadequately reflect their share of direct and incremental losses for which use of this set-aside authority would be appropriate. This information should pertain to classes of carriers, not just to individual carriers, and concern such subjects as the type of operations conducted by a class of carriers and the reasons why use of the statute's general approach to compensation is inadequate for the class. Commenters should note that the statute's general approach does not assure that all losses attributable to the terrorist events will be compensated; because of the statute's default provision to the ASM formula, the vast majority of passenger carriers are scheduled to receive compensation well below their claimed losses.

If the Department were to establish a set-aside, there are a number of possible ways that funds from the set-aside could

be allocated. In its comment, the Association of Air Medical Services (AAMS) recommended that the Department calculate lost volume by comparing the flight volume of August and September 2001, multiplying the difference by the average revenue per flight, and extrapolating the result to the industry as a whole. AAMS suggested that the functional equivalent of ASMs (i.e., as a measurement of capacity) could be calculated by multiplying the average number of seats in air ambulances aircraft (six) times the average speed of the aircraft (150 m.p.h.) times the hours per day it is staffed and ready (24). This, AAMS suggested, would create a reasonable approximation of the capacity of an air ambulance aircraft per day. This suggestion, a variation of it, or some other surrogate for ASMs could be one possible approach to distribution of compensation under a set-aside.

Subsequent to the enactment of the Transportation and Aviation Security Act, AAMS and the air carrier MEDjet approached the Department separately with alternative approaches for compensating air ambulances, that do not rely on ASM's as a factor. These proposed alternative approaches are derived from the Medicare Fee Schedule, which both AAMS and MEDjet propose could be used as a benchmark for determining lost revenue based on lost volume. Both AAMS and MEDjet propose that the lost revenues for an air ambulance could be determined by taking a base rate for each lost trip and adding that amount to the product of the lost miles for that trip and a fixed mileage rate. The base rate and the mileage rate would be derived from the Medicare Fee Schedule. Both AAMS and MEDjet proposed a different, limited period of time to be used for calculating lost trips as well as different base rate and mileage rate figures. One disadvantage to these approaches is that they may not be readily adaptable to use for air tour operators or other classes of carriers.

Another approach could be to calculate the average percentage of documented direct and incremental losses that applicant carriers have received in compensation. We could then apply that percentage to the direct and incremental losses that carriers in the class or classes subject to the set-aside could document. For example, if on average all carriers were eligible, under the statutory formula, for compensation equivalent to 60 percent of their documented losses, the Department could compensate carriers participating in the set-aside for 60 percent of their documented losses.

The Department seeks comments on these or other approaches that the Department could use to allocate funds from a set-aside, as well as on the underlying question of whether the Department should use its discretionary authority to establish a set-aside in the first place.

The Department will keep the docket open for 14 days to receive comments on this set of issues. If the Department decides to establish a set-aside, we would amend Part 330 in the future to provide application instructions for carriers who sought compensation under the set-aside.

Regulatory Analyses and Notices

This request for comments pertains to an underlying rule (49 CFR Part 330) that is significant for purposes of Executive Order 12886 and the Department of Transportation's rulemaking policies and procedures. If the Department decides to undertake further rulemaking after reviewing comments, the Department will follow applicable provisions of these requirements.

If the Department proceeds with further rulemaking on the subject of this notice, the rulemaking may have a significant economic effect on a substantial number of small entities. Among the entities in question are air ambulances and other classes of air carriers that include small entities. In analyzing small entity impact for purposes of the Regulatory Flexibility Act, we believe that, to the extent that the use of the Department's set-aside authority impacts small air carriers, the impact will be a favorable one, since it will consist of receiving additional compensation. The Department has also concluded that this rule does not have sufficient Federalism implications to warrant the consultation requirements of Executive Order 13132.

List of Subjects in 14 CFR Part 330

Air carriers, Grant programs—transportation, Reporting and recordkeeping requirements.

Issued this 26th day of December, 2001, at Washington, DC.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 01–32177 Filed 12–27–01; 4:28 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 330

[Docket OST–2001–10885]

RIN 2105–AD06

Procedures for Compensation of Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Request for comments.

SUMMARY: On September 22, 2001, President Bush signed into law the Air Transportation Safety and System Stabilization Act (''the Act''). The Act makes available to the President funds to compensate air carriers, as defined in the Act, for direct losses suffered as a result of any Federal ground stop order and incremental losses beginning September 11, 2001, and ending December 31, 2001, resulting from the September 11 terrorist attacks on the United States. In a final rule being published in today's **Federal Register**, the Department is amending its application procedures for this compensation program. This document requests further comments on the issue of whether the Department should establish a set-aside of compensation funds for classes of air carriers, such as air ambulances and air tour operators, for whom the final rule's compensation formula may not adequately reflect their share of direct and incremental losses.

DATES: Comments should be received by January 16, 2002; late-filed comments will be considered to the extent practicable.

ADDRESSES: Interested persons should sent comments to Docket Clerk, Docket OST–2001–10885, Department of Transportation, 400 7th Street, SW., Room PL–401, Washington, DC 20590. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 10 a.m. to 5 p.m., Monday through Friday. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/*. Commenters who wish to file comments electronically should follow the instructions on the DMS Web site. Interested persons can also review comments through this same Web site.

FOR FURTHER INFORMATION CONTACT: Steven Hatley, U.S. Department of Transportation, Office of International Aviation, 400 7th Street, SW., Room 6402, Washington, DC 20590. Telephone 202–366–1213.

SUPPLEMENTARY INFORMATION: As noted in the preamble to the final rule on airline compensation procedures that the Department is publishing in today's **Federal Register**, commenters expressed a concern about the provisions of the Act that based calculations of compensation for which air carriers are eligible on available seat-miles (ASMs). The concern was basically that this ASM-based formula would not adequately compensate air ambulances and air tour operators for the losses they suffered as the result of the September 11 attacks.

In the Aviation and Transportation Security Act (Public Law 107–71), Congress addressed the situations of air ambulances, air tour operators and other similarly situated classes of air carriers. Section 124(d) of this statute amended section 103 of the Air Transportation Safety and System Stabilization Act. The purpose of this amendment, according to the Conference Report (House Report 107–296 at p. 79), is to ''to allow for a modified system of providing compensation to air tour operators and air ambulances to better address their needs after industry wide losses.'' The following is the text of this amendment:

> (d) Compensation for Certain Air Carriers.—
>
> (1) Set-aside.—The President may set aside a portion of the amount of compensation payable to air carriers under section 101(a)(2) to provide compensation to classes of air carriers, such as air tour operators and air ambulances (including hospitals operating air ambulances) for whom application of a distribution formula containing available seat miles as a factor would inadequately reflect their share of direct and incremental losses. The President shall reduce the $4,500,00,000 specified in subsection (b)(2)(A)(i) by the amount set aside under this subsection.
>
> (2) Distribution of Amounts.—The President shall distribute the amount set aside under this subsection proportionally among such air carriers based on an appropriate auditable measure, as determined by the President.

Under the statutory language, use of this set-aside authority is discretionary (''The President may set aside * * *''). Neither the statute nor the Conference Report provides any guidance concerning the appropriate size of such a set-aside, the methodology for proportionally allocating any funds set aside, or the identity of any other ''classes'' of air carriers that could be included in it, if the President chooses to use the authority.

The Department is considering using the discretion provided by section 124(d) of the Transportation Security Act to set aside a portion of the $4.5 billion compensation available for passenger carriers for air tour operators, air ambulances and other classes of air carriers for whom application of an ASM-based compensation formula would inadequately reflect their share of direct and incremental losses. The Department does not have sufficient information to determine whether to create such a set-aside at this time, which classes of carriers a set-aside would cover, what the appropriate size of such a set-aside would be, or how any funds set aside should be allocated. While we have some information about the situation of air ambulances, we have little information about the situation of other classes of air carriers to which such a set-aside could apply.

Both because of this lack of information and our desire to avoid delays in distributing the second increment of compensation funds to carriers, the Department did not make a determination, for purposes of today's final rule, about whether to create a set-aside. After this second increment of funds is distributed, approximately 15 percent of the authorized $4.5 billion will remain. This should be more than enough to use for the purpose of compensating carriers who would be subject to such a set-aside. If the Department decides to implement a set-aside, we would do so in connection with the third increment of compensation funds. To help the Department decide whether to implement a set-aside, the Department requests information concerning whether there are classes of air carriers for whom application of an ASM-based compensation formula would inadequately reflect their share of direct and incremental losses for which use of this set-aside authority would be appropriate. This information should pertain to classes of carriers, not just to individual carriers, and concern such subjects as the type of operations conducted by a class of carriers and the reasons why use of the statute's general approach to compensation is inadequate for the class. Commenters should note that the statute's general approach does not assure that all losses attributable to the terrorist events will be compensated; because of the statute's default provision to the ASM formula, the vast majority of passenger carriers are scheduled to receive compensation well below their claimed losses.

If the Department were to establish a set-aside, there are a number of possible ways that funds from the set-aside could

be allocated. In its comment, the Association of Air Medical Services (AAMS) recommended that the Department calculate lost volume by comparing the flight volume of August and September 2001, multiplying the difference by the average revenue per flight, and extrapolating the result to the industry as a whole. AAMS suggested that the functional equivalent of ASMs (i.e., as a measurement of capacity) could be calculated by multiplying the average number of seats in air ambulances aircraft (six) times the average speed of the aircraft (150 m.p.h.) times the hours per day it is staffed and ready (24). This, AAMS suggested, would create a reasonable approximation of the capacity of an air ambulance aircraft per day. This suggestion, a variation of it, or some other surrogate for ASMs could be one possible approach to distribution of compensation under a set-aside.

Subsequent to the enactment of the Transportation and Aviation Security Act, AAMS and the air carrier MEDjet approached the Department separately with alternative approaches for compensating air ambulances, that do not rely on ASM's as a factor. These proposed alternative approaches are derived from the Medicare Fee Schedule, which both AAMS and MEDjet propose could be used as a benchmark for determining lost revenue based on lost volume. Both AAMS and MEDjet propose that the lost revenues for an air ambulance could be determined by taking a base rate for each lost trip and adding that amount to the product of the lost miles for that trip and a fixed mileage rate. The base rate and the mileage rate would be derived from the Medicare Fee Schedule. Both AAMS and MEDjet proposed a different, limited period of time to be used for calculating lost trips as well as different base rate and mileage rate figures. One disadvantage to these approaches is that they may not be readily adaptable to use for air tour operators or other classes of carriers.

Another approach could be to calculate the average percentage of documented direct and incremental losses that applicant carriers have received in compensation. We could then apply that percentage to the direct and incremental losses that carriers in the class or classes subject to the set-aside could document. For example, if on average all carriers were eligible, under the statutory formula, for compensation equivalent to 60 percent of their documented losses, the Department could compensate carriers participating in the set-aside for 60 percent of their documented losses.

The Department seeks comments on these or other approaches that the Department could use to allocate funds from a set-aside, as well as on the underlying question of whether the Department should use its discretionary authority to establish a set-aside in the first place.

The Department will keep the docket open for 14 days to receive comments on this set of issues. If the Department decides to establish a set-aside, we would amend Part 330 in the future to provide application instructions for carriers who sought compensation under the set-aside.

Regulatory Analyses and Notices

This request for comments pertains to an underlying rule (49 CFR Part 330) that is significant for purposes of Executive Order 12886 and the Department of Transportation's rulemaking policies and procedures. If the Department decides to undertake further rulemaking after reviewing comments, the Department will follow applicable provisions of these requirements.

If the Department proceeds with further rulemaking on the subject of this notice, the rulemaking may have a significant economic effect on a substantial number of small entities. Among the entities in question are air ambulances and other classes of air carriers that include small entities. In analyzing small entity impact for purposes of the Regulatory Flexibility Act, we believe that, to the extent that the use of the Department's set-aside authority impacts small air carriers, the impact will be a favorable one, since it will consist of receiving additional compensation. The Department has also concluded that this rule does not have sufficient Federalism implications to warrant the consultation requirements of Executive Order 13132.

List of Subjects in 14 CFR Part 330

Air carriers, Grant programs—transportation, Reporting and recordkeeping requirements.

Issued this 26th day of December, 2001, at Washington, DC.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 01–32177 Filed 12–27–01; 4:28 pm]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

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§§ 1.501–1.640	(869–042–00083–8)	32.00	Apr. 1, 2000
§§ 1.641–1.850	(869–042–00084–6)	41.00	Apr. 1, 2000
§§ 1.851–1.907	(869–042–00085–4)	43.00	Apr. 1, 2000
§§ 1.908–1.1000	(869–042–00086–2)	41.00	Apr. 1, 2000
§§ 1.1001–1.1400	(869–042–00087–1)	45.00	Apr. 1, 2000
§§ 1.1401–End	(869–042–00088–9)	66.00	Apr. 1, 2000
2–29	(869–042–00089–7)	45.00	Apr. 1, 2000
30–39	(869–042–00090–1)	31.00	Apr. 1, 2000
40–49	(869–042–00091–9)	18.00	Apr. 1, 2000
50–299	(869–042–00092–7)	23.00	Apr. 1, 2000
300–499	(869–042–00093–5)	43.00	Apr. 1, 2000
500–599	(869–042–00094–3)	12.00	Apr. 1, 2000
600–End	(869–042–00095–1)	12.00	Apr. 1, 2000
27 Parts:			
1–199	(869–042–00096–0)	59.00	Apr. 1, 2000

Title	Stock Number	Price	Revision Date
200–End	(869–042–00097–8)	18.00	Apr. 1, 2000
28 Parts:			
0-42	(869–042–00098–6)	43.00	July 1, 2000
43-end	(869-042-00099-4)	36.00	July 1, 2000
29 Parts:			
0–99	(869–042–00100–1)	33.00	July 1, 2000
100–499	(869–042–00101–0)	14.00	July 1, 2000
500–899	(869–042–00102–8)	47.00	July 1, 2000
900–1899	(869–042–00103–6)	24.00	July 1, 2000
1900–1910 (§§ 1900 to 1910.999)	(869–042–00104–4)	46.00	[6]July 1, 2000
1910 (§§ 1910.1000 to end)	(869–042–00105–2)	28.00	[6]July 1, 2000
1911–1925	(869–042–00106–1)	20.00	July 1, 2000
1926	(869–042–00107–9)	30.00	[6]July 1, 2000
1927–End	(869–042–00108–7)	49.00	July 1, 2000
30 Parts:			
1–199	(869–042–00109–5)	38.00	July 1, 2000
200–699	(869–042–00110–9)	33.00	July 1, 2000
700–End	(869–042–00111–7)	39.00	July 1, 2000
31 Parts:			
0–199	(869–042–00112–5)	23.00	July 1, 2000
200–End	(869–042–00113–3)	53.00	July 1, 2000
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–042–00114–1)	51.00	July 1, 2000
191–399	(869–042–00115–0)	62.00	July 1, 2000
400–629	(869–042–00116–8)	35.00	July 1, 2000
630–699	(869–042–00117–6)	25.00	July 1, 2000
700–799	(869–042–00118–4)	31.00	July 1, 2000
800–End	(869–042–00119–2)	32.00	July 1, 2000
33 Parts:			
1–124	(869–042–00120–6)	35.00	July 1, 2000
125–199	(869–042–00121–4)	45.00	July 1, 2000
200–End	(869–042–00122–5)	36.00	July 1, 2000
34 Parts:			
1–299	(869–042–00123–1)	31.00	July 1, 2000
300–399	(869–042–00124–9)	28.00	July 1, 2000
400–End	(869–042–00125–7)	54.00	July 1, 2000
35	(869–042–00126–5)	10.00	July 1, 2000
36 Parts			
1–199	(869–042–00127–3)	24.00	July 1, 2000
200–299	(869–042–00128–1)	24.00	July 1, 2000
300–End	(869–042–00129–0)	43.00	July 1, 2000
37	(869–042–00130–3)	32.00	July 1, 2000
38 Parts:			
0–17	(869–042–00131–1)	40.00	July 1, 2000
18–End	(869–042–00132–0)	47.00	July 1, 2000
39	(869–042–00133–8)	28.00	July 1, 2000
40 Parts:			
1–49	(869–042–00134–6)	37.00	July 1, 2000
50–51	(869–042–00135–4)	28.00	July 1, 2000
52 (52.01–52.1018)	(869–042–00136–2)	36.00	July 1, 2000
52 (52.1019–End)	(869–042–00137–1)	44.00	July 1, 2000
53–59	(869–042–00138–9)	21.00	July 1, 2000
60	(869–042–00139–7)	66.00	July 1, 2000
61–62	(869–042–00140–1)	23.00	July 1, 2000
63 (63.1–63.1119)	(869–042–00141–9)	66.00	July 1, 2000
63 (63.1200–End)	(869–042–00142–7)	49.00	July 1, 2000
64–71	(869–042–00143–5)	12.00	July 1, 2000
72–80	(869–042–00144–3)	47.00	July 1, 2000
81–85	(869–042–00145–1)	36.00	July 1, 2000
86	(869–042–00146–0)	66.00	July 1, 2000
87-135	(869–042–00146–8)	66.00	July 1, 2000
136–149	(869–042–00148–6)	42.00	July 1, 2000
150–189	(869–042–00149–4)	38.00	July 1, 2000
190–259	(869–042–00150–8)	25.00	July 1, 2000
260–265	(869–042–00151–6)	36.00	July 1, 2000
266–299	(869–042–00152–4)	35.00	July 1, 2000
300–399	(869–042–00153–2)	29.00	July 1, 2000
400–424	(869–042–00154–1)	37.00	July 1, 2000
425–699	(869–042–00155–9)	48.00	July 1, 2000
700–789	(869–042–00156–7)	46.00	July 1, 2000
790–End	(869–042–00157–5)	23.00	[6]July 1, 2000
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–042–00158–3)	15.00	July 1, 2000
101	(869–042–00159–1)	37.00	July 1, 2000
102–200	(869–042–00160–5)	21.00	July 1, 2000
201–End	(869–042–00161–3)	16.00	July 1, 2000
42 Parts:			
1–399	(869–038–00162–4)	36.00	Oct. 1, 1999
400–429	(869–038–00163–2)	44.00	Oct. 1, 1999
430–End	(869–038–00164–1)	54.00	Oct. 1, 1999
43 Parts:			
1–999	(869–042–00165–6)	45.00	Oct. 1, 2000
1000–end	(869–038–00166–7)	47.00	Oct. 1, 1999
44	(869–038–00167–5)	28.00	Oct. 1, 1999
45 Parts:			
1–199	(869–042–00168–1)	50.00	Oct. 1, 2000
200–499	(869–038–00169–1)	16.00	Oct. 1, 1999
500–1199	(869–042–00170–2)	45.00	Oct. 1, 2000
1200–End	(869–038–00171–3)	40.00	Oct. 1, 1999
46 Parts:			
1–40	(869–038–00172–1)	27.00	Oct. 1, 1999
41–69	(869–038–00173–0)	23.00	Oct. 1, 1999
70–89	(869–038–00174–8)	8.00	Oct. 1, 1999
90–139	(869–042–00175–3)	41.00	Oct. 1, 2000
140–155	(869–038–00176–4)	15.00	Oct. 1, 1999
156–165	(869–038–00177–2)	21.00	Oct. 1, 1999
166–199	(869–038–00178–1)	27.00	Oct. 1, 1999
200–499	(869–038–00179–9)	23.00	Oct. 1, 1999
500–End	(869–042–00180–0)	23.00	Oct. 1, 2000
47 Parts:			
0–19	(869–038–00181–1)	39.00	Oct. 1, 1999
20–39	(869–042–00182–6)	41.00	Oct. 1, 2000
40–69	(869–038–00183–7)	26.00	Oct. 1, 1999
70–79	(869–038–00184–5)	39.00	Oct. 1, 1999
80–End	(869–042–00185–1)	54.00	Oct. 1, 2000
48 Chapters:			
1 (Parts 1–51)	(869–038–00186–1)	55.00	Oct. 1, 1999
1 (Parts 52–99)	(869–038–00187–0)	30.00	Oct. 1, 1999
2 (Parts 201–299)	(869–038–00188–8)	36.00	Oct. 1, 1999
3–6	(869–038–00189–3)	40.00	Oct. 1, 2000
7–14	(869–038–00190–0)	35.00	Oct. 1, 1999
15–28	(869–038–00191–8)	36.00	Oct. 1, 1999
29–End	(869–038–00192–6)	25.00	Oct. 1, 1999
49 Parts:			
1–99	(869–038–00193–4)	34.00	Oct. 1, 1999
100–185	(869–038–00194–2)	53.00	Oct. 1, 1999
186–199	(869–038–00195–1)	13.00	Oct. 1, 1999
200–399	(869–038–00196–9)	53.00	Oct. 1, 1999
400–999	(869–038–00197–7)	57.00	Oct. 1, 1999
1000–1199	(869–042–00198–2)	25.00	Oct. 1, 2000
1200–End	(869–042–00199–1)	21.00	Oct. 1, 2000
50 Parts:			
1–199	(869–038–00200–1)	43.00	Oct. 1, 1999
200–599	(869–042–00201–6)	35.00	Oct. 1, 2000

Title	Stock Number	Price	Revision Date
600–End	(869–038–00202–7)	37.00	Oct. 1, 1999
CFR Index and Findings Aids	(869–042–00047–1)	53.00	Jan. 1, 2000
Complete 1999 CFR set		951.00	1999
Microfiche CFR Edition:			
Subscription (mailed as issued)		290.00	1999
Individual copies		1.00	1999
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1999, through July 1, 2000. The CFR volume issued as of July 1, 1999 should be retained..

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 2002

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
Jan 2	Jan 17	Feb 1	Feb 19	March 4	April 2
Jan 3	Jan 18	Feb 4	Feb 19	March 4	April 3
Jan 4	Jan 22	Feb 4	Feb 19	March 5	April 4
Jan 7	Jan 22	Feb 6	Feb 21	March 8	April 8
Jan 8	Jan 23	Feb 7	Feb 22	March 11	April 8
Jan 9	Jan 24	Feb 8	Feb 25	March 11	April 9
Jan 10	Jan 25	Feb 11	Feb 25	March 11	April 10
Jan 11	Jan 28	Feb 11	Feb 25	March 12	April 11
Jan 14	Jan 29	Feb 13	Feb 28	March 15	April 15
Jan 15	Jan 30	Feb 14	March 1	March 18	April 15
Jan 16	Jan 31	Feb 15	March 4	March 18	April 16
Jan 17	Feb 1	Feb 19	March 4	March 18	April 17
Jan 18	Feb 4	Feb 19	March 4	March 19	April 18
Jan 22	Feb 6	Feb 21	March 8	March 25	April 22
Jan 23	Feb 7	Feb 22	March 11	March 25	April 23
Jan 24	Feb 8	Feb 25	March 11	March 25	April 24
Jan 25	Feb 11	Feb 25	March 11	March 26	April 25
Jan 28	Feb 12	Feb 27	March 14	March 29	April 29
Jan 29	Feb 13	Feb 28	March 15	April 1	April 29
Jan 30	Feb 14	March 1	March 18	April 1	April 30
Jan 31	Feb 15	March 4	March 18	April 1	May 1